

UNITED STATES OF AMERICA) CAUSE NO. 3:04-CR-240-P
(
vs.)
(SEPTEMBER 22, 2008
) DALLAS, TEXAS
HOLY LAND FOUNDATION, ET AL (9:00 A.M.

STATEMENT OF FACTS

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1 THE COURT: Good morning. I understand the jury is
2 on the way up, so we will get started, and then they will be
3 in here in just a few minutes.

4 I understand there is not any issues that counsel needs
5 to take up, other than the length of time for opening
6 statements. We will go over that in a few minutes, but no
7 other issues. Is that correct?

8 MR. JACKS: Judge, the only thing I wanted to make
9 sure was that the jury is aware and that all parties are aware
10 that the Holy Land Foundation Corporation is a Defendant and
11 that there will be evidence in that regard.

12 As I understand it, and as was represented by Judge Fish
13 before the beginning of the first trial, that the Foundation
14 has no employees and no officers and so there is no one to
15 represent it, but it is an essential part of this lawsuit
16 because of the forfeiture provisions and the funds that are
17 being held subject to being forfeited.

18 So for that reason, I just wanted to make sure that that
19 doesn't get lost during the trial, the fact that the
20 corporation is also a Defendant.

21 THE COURT: All right. And certainly I was aware,
22 and I am sure you will remind the jury in your opening
23 statements.

24 Anything from the Defense that we need to address?

25 And I think we discussed the time for opening statements,

1 and my plan is still -- When the jury comes in I will swear
2 them, will administer the oath, and then I will give them
3 their instructions, and then we will proceed to reading the
4 indictment and taking pleas, and then we will move on into
5 opening statements.

6 The Defense has been allotted a total of two hours for
7 opening statements, and I understand you might want to divide
8 that up different than what you told me last Thursday, and so
9 that --

10 MS. HOLLANDER: Thank you, Your Honor. We will
11 divide it up.

12 THE COURT: Let me or Jennifer know so I can keep a
13 rough time on that, because I want to keep a time overall.

14 Any other matters we need to address?

15 MR. JACKS: Judge, I don't know what the Court's
16 plans were with regard to the memorial service with Judge
17 Sanders, if that will affect our schedule.

18 THE COURT: We don't have all the details yet, so we
19 are not in a position -- We will have to be off some Wednesday
20 afternoon. Exactly how much time I don't know yet. We should
21 know something by the end of today, so we will discuss that
22 before the day is over today. Just remind me before we leave
23 today to take that back up.

24 Counsel, ready for the jury? All right. Go ahead and
25 bring the jury in.

1 (Whereupon, the jury entered the courtroom.)

2 THE COURT: Ladies and gentlemen of the jury, good
3 morning and welcome back. And we are ready now to proceed.

4 And I will ask you to raise your hand and take an oath as
5 jurors in this case.

6 (Whereupon, the oath was administered by the Clerk.)

7 THE COURT: Members of the jury, now that you have
8 been sworn in, let me give you some instructions that will
9 guide your deliberations while on the jury.

10 As you remember, of course, from our conversations last
11 week and then the week before that, or two weeks before that
12 when you were here, we expect this to be a fairly lengthy
13 trial. We will be here about six weeks, and so it will be
14 important for you to follow these instructions. I will remind
15 you about them periodically. You will be receiving a lot of
16 information during the time that you are on this jury service.

17 First, as jurors it will be your duty to find from the
18 evidence what the facts are. The jury and the jury alone is
19 the judges of the facts. You will then have to apply to these
20 facts the law as I will give it to you, and you must follow
21 that law whether you agree with it or not.

22 I think we talked to each of you about this last week
23 when you were in being questioned individually. The oath that
24 you took stated you will reach a verdict based on the law and
25 based on the evidence.

1 For those that haven't served on a jury before, once all
2 the evidence has been presented I will give you a written
3 document--we call it the Court's charge to the jury--that will
4 contain the law that applies in this case. It will contain
5 instructions and definitions. It will contain all the law you
6 need to know, so you don't need to worry about getting any
7 information on your own. All the law will be in there.

8 You will take that law as I give it to you, along with
9 the instructions, and you will have heard six weeks or so of
10 evidence, and take those two together and we will be asking
11 you to make decisions in this case as to each of these
12 Defendants.

13 Nothing I may say or do during the course of the trial is
14 intended to indicate, nor should be taken by you as
15 indicating, what your verdict should be. The evidence from
16 which you will find the facts will consist of the testimony of
17 witnesses, documents, and other things received into the
18 record as exhibits, and any facts that the lawyers agree or
19 stipulate to, or that the Court may instruct you to find.
20 Again, we discussed these things last week with each of you.

21 The evidence, of course, is what is presented here in the
22 courtroom; not anything that you may have heard or read
23 outside the courtroom, but strictly is what is presented in
24 the courtroom where witnesses are here under oath, testify in
25 front of everyone, and subject to cross examination.

1 Certain things are not evidence and should not be
2 considered by you in arriving at your verdict. I will list
3 those for you now.

4 Statements, arguments, and questions by the lawyers are
5 not evidence. Anything the lawyers say is not evidence.
6 Anything I say is not evidence, unless I instruct you of
7 something that you are to find. But typically the evidence
8 will come from the witness stand and then documents or
9 exhibits or photographs, anything that is introduced here in
10 evidence.

11 Also objections to questions are not evidence. Lawyers
12 have an obligation to their clients to make objections when
13 they believe evidence being offered is improper under the
14 rules of evidence. You should not be influenced by the
15 objection or by my ruling on it.

16 If the objection is sustained, then ignore the question.
17 You typically won't hear the answer, so forget the question.
18 If it is overruled, then you will hear the answer, and treat
19 the answer like any other item of evidence, and don't worry
20 about the objection. If I instruct you at any time that some
21 item of evidence is received for a limited purpose, you should
22 follow that instruction.

23 Any testimony that the Court excludes or I instruct you
24 to disregard is not evidence and should not be considered by
25 you in arriving at your verdict.

1 Also, as we discussed last week, anything you may have
2 seen or heard outside the courtroom from today on is not
3 evidence and should be disregarded. And as we discussed with
4 some of you, be sure not to share anything that you have heard
5 or seen outside the courtroom with anybody else. That is not
6 evidence, that is not something to discuss, and it is
7 certainly not anything to be considered by you in arriving at
8 your verdict in this case. You are to decide this case solely
9 on the evidence presented here in the courtroom.

10 Generally speaking there are two kinds of
11 evidence--direct and circumstantial evidence. Direct evidence
12 is direct proof of a fact, such as the testimony of an
13 eyewitness establishing a certain fact. Circumstantial
14 evidence is proof of facts from which you may infer or
15 conclude that other facts exist. I will give you further
16 instructions on this in the Court's charge to the jury that we
17 discussed earlier, but have in mind that you may consider both
18 kinds of evidence.

19 The law doesn't consider one kind of evidence better than
20 the other. That ultimately will be up to you as far as what
21 evidence you wish to accept and to not accept.

22 It will be up to you as jurors to decide which witnesses
23 to believe, which witnesses not to believe, and how much of
24 any witness' testimony to accept or to reject. I will give
25 you some guidelines in the Court's charge to the jury that may

1 help you in assessing the credibility of witnesses, but for
2 now have in mind that is one of the important jobs roles that
3 a jury does. You will be hearing a lot of evidence, and you
4 will sort and sift through that to make your own determination
5 as to what you believe and don't believe so you can arrive at
6 what the facts are in this case.

7 As you know, this is a criminal case. There are three
8 basic rules about a criminal case you must keep in mind. We
9 went over these before, but I want to touch on them because
10 they are important.

11 First, the Defendants are presumed innocent. Each of
12 these Defendants, like every other person accused of a crime,
13 they are presumed innocent until proven guilty. The
14 indictment against the Defendants brought by the Government is
15 only an accusation, nothing more. That is not any evidence
16 that you should consider in arriving at your verdict, the fact
17 they were indicted. That is what brings them here into Court.
18 Start off with a clean slate, they are presumed innocent, the
19 burden of proof is on the Government, and then you start
20 looking at the evidence that is presented to you here in
21 court.

22 The burden of proof is on the Government until the very
23 end of the case. The Defendants have no burden to prove their
24 innocence or to present any evidence or to testify. Since the
25 Defendants have the right to remain silent, the law prohibits

1 you in arriving at your verdict from considering that the
2 Defendants may not have testified.

3 Third, the Government must prove the Defendants' guilt
4 beyond a reasonable doubt. I think we talked about that with
5 most of you, if not each of you, last week when you were here,
6 but I will give you some further instructions on this, as well
7 as other matters, in the Court's charge to the jury, and I
8 will give you a definition for this. But have in mind that
9 this is the burden of proof, and it is different than a civil
10 case.

11 Some of you may have served in civil jury trials before.
12 You may remember the burden of proof was by a preponderance of
13 the evidence, something more likely so than not. That is, of
14 course, a lower standard than applies in criminal cases. The
15 standard in a criminal case is beyond a reasonable doubt.
16 That is the burden that the Government has.

17 A few words now about your conduct as jurors while you
18 are participating as jurors in this case. First, during the
19 trial you should not discuss the case with anyone, nor permit
20 anyone to discuss it with you. And this applies until the end
21 of the case. This applies to spouses, friends, neighbors,
22 co-workers, anybody. We don't want you to get any influence
23 from outside the courtroom. Those individuals that may want
24 to talk to you about it, they are not here in court listening
25 to the evidence, they are not observing the witnesses, they

1 are not going to know what you know. So simply tell them you
2 can't talk about it until after the case is concluded.

3 Once the case is over, you will be free to discuss it as
4 much as you want to, but during the case it is important that
5 you not talk about this case with anyone, and simply that way
6 we don't have any improper outside influences.

7 Do not read or listen to anything touching on this case
8 in any way. And there have been some media reports in this
9 case already. There may continue to be. So you just need to
10 be careful and make sure you don't read any newspaper
11 accounts. Of course, if you are watching TV and listening to
12 the radio, sometimes it will come on before you know it. At
13 that point kill the sound or walk out of the room, turn it
14 off, whatever you need to do, but make sure you try not to
15 listen to anything being reported about this case. And if
16 anyone should try to talk to you about this case, you should
17 bring that to my attention immediately.

18 Do not try to do any research or make any investigation
19 about the case on your own. Occasionally we will have jurors
20 who feel maybe their questions aren't being answered by the
21 lawyers, so they will make phone calls and seek information.
22 That is improper, of course. The lawyers will bring you the
23 evidence that they think is important, both sides. That
24 amounts to secret evidence that nobody has the chance -- That
25 information you are getting is not under oath, that is not

1 being provided here in open court, not subject to cross
2 examination by other side. You will hear plenty of evidence
3 over the next six weeks, so focus your attention on the
4 evidence you hear.

5 And lastly, do not form any opinion until all the
6 evidence is in. You will be thinking about the case as you go
7 along, but don't form any final decisions until you have heard
8 everything. The case evolves. Anything this long will take
9 some time, so wait until you have heard everything from both
10 sides before you make your final decisions in this case.

11 And by then you will also receive the instructions on the
12 law and at that point you will have everything you will need
13 in order to make a proper decision in this case. So wait
14 until you have heard everything from all the parties, keep an
15 open mind until you have heard everything and until you
16 receive the instructions on the law.

17 Some jurors ask about taking notes. I do allow taking
18 notes. There may be some pads, hopefully, and some pens, so
19 you can take notes if you choose to do so. I will leave that
20 up to you. Just a couple of things to remember if you decide
21 to take notes. That is, don't get so involved in taking notes
22 that you are missing what is going on. I think you will find
23 that one of the most useful things you can do is simply
24 observe the witnesses as they are being questioned, as they
25 testify, so you can form your impressions about them and the

1 testimony they are giving.

2 And then secondly, the notes are strictly for your own
3 personal use. They are not a substitute for the official
4 record. There is one official record, and that is what is
5 being prepared by the court reporter that is here in front of
6 me. So don't share them with anybody. Don't substitute them
7 as an official record. They are strictly for your own
8 personal use.

9 If you should decide to take notes, don't take them home
10 with you at the end of the day. Leave them in the jury room,
11 and they will be there for you in the morning, and you can
12 have them if you wish to use them.

13 And then lastly, you have had the juror tags. Wear those
14 while you are here. Do not talk to any of the lawyers, the
15 Defendants, the family members, any of the agents that are
16 involved here. You will hear from some law enforcement
17 officers. Just keep yourselves apart from them, other than
18 casual greetings. If you see them you can say "Good morning"
19 or "Hello," but don't engage in any conversations. That is
20 why you are wearing the juror tags.

21 Sometimes we have jurors that want to make conversation
22 with somebody, and it may not be about the case, but it still
23 would look improper. Nobody knows what you are talking about.
24 So the best thing to do is keep yourselves apart from anybody
25 that is participating in any way in this case.

1 We will in just a few minutes have the indictment read,
2 which is fairly lengthy. That is the accusations against the
3 Defendants. We will take the Defendants' pleas, and then go
4 straight from that to opening statements by the lawyers.

5 The Government gets to open, as they have the burden of
6 proof. You have seen where they go first every time. So you
7 will hear from -- Ms. Shapiro is making the opening statement
8 on behalf of the Government.

9 The opening statements, as I told you, is not evidence,
10 but this provides a framework what the parties believe their
11 case will show or what the case will show, so it gives you a
12 framework of the issues that are involved and what to look
13 for.

14 Then once Ms. Shapiro makes her opening statement, we
15 will take a break and then you will hear from counsel from
16 each of the Defendants and address you, and that should take
17 us into sometime after lunch. Once we come back from lunch,
18 we will finish that up, and start the evidence sometime this
19 afternoon.

20 At this time, Mr. Jacks, who is reading the indictment?

21 MR. JACKS: Yes, Your Honor, I am.

22 THE COURT: All right.

23 MR. JACKS: Ladies and gentlemen, at this time I am
24 going to read the indictment which was returned by the federal
25 grand jury in the Northern District of Texas in this case.

1 (Whereupon, the indictment was read in open court.)

2 THE COURT: Thank you, Mr. Jacks. And to these
3 charges how do the Defendants plead?

4 DEFENDANT BAKER: Shukri Abu Baker. Your Honor, I
5 plead not guilty.

6 DEFENDANT ODEH: I plead not guilty.

7 THE COURT: Mr. Odeh?

8 DEFENDANT EL-MEZAIN: Your Honor, I plead not
9 guilty.

10 THE COURT: And you are Mr. El-Mezain?

11 DEFENDANT EL-MEZAIN: Yes.

12 DEFENDANT ELASHI: Not guilty.

13 THE COURT: And we will enter a plea of not guilty
14 for the Holy Land Foundation.

15 Ms. Cadeddu?

16 DEFENDANT ABDULQADER: I plead not guilty.

17 THE COURT: Thank you.

18 So each of the Defendants have entered pleas of not
19 guilty here, and the corporation Holy Land Foundation is also
20 A named a Defendant, as you heard in the indictment, and we
21 will enter a plea of not guilty for them.

22 Let's take the morning recess. We will take about a
23 20-minute break. We will be back here about 20 till by that
24 clock, and at that point you will hear opening statements from
25 the Prosecutor and then the Defense attorneys.

1 (Whereupon, the jury left the courtroom.)

2 THE COURT: All right. We will be in recess.

3 (Brief Recess.)

4 THE COURT: All right. Members of the jury, as we
5 explained to you then, we will begin with opening statements.

6 On behalf of the Government, Ms. Shapiro.

7 MS. SHAPIRO: May it please the Court, counsel,
8 co-counsel.

9 My name is Elizabeth Shapiro and I am an attorney with
10 the Department of Justice, and I wanted to start this morning
11 by thanking you for your service as jurors, because other than
12 serving in the military, jury service is probably the most
13 important civic duty you will ever do in your lifetime, so I
14 want to thank you for being here.

15 This case is a big case, it is an important case, but it
16 is not really that hard of a case. It is about violating the
17 laws of the United States by funding a terrorist organization.

18 You are going to hear about a dangerous terrorist
19 organization called Hamas, and you are going to hear that
20 Hamas is a single organization and it has a military side and
21 it has a social side, but they act together. And that social
22 side is in order to build popular support. Hamas can't
23 survive without popular support from the people in the West
24 Bank and Gaza and Palestine.

25 Now, when you were all here for your first day of jury

1 selection, His Honor Judge Solis told you that the law
2 prohibits giving money to a terrorist organization even if
3 that money goes to a charity, and you are going to learn
4 during this trial there are important reasons for that law.

5 Money is the life blood of terrorist organizations. Once
6 money gets into the hands of Hamas, Hamas can do anything it
7 wants with that money. And when you give money to the social
8 side of Hamas, you free up other money that the military side
9 can use. It is all one organization and it is against the law
10 to give to any part of it, and there are good reasons for
11 that.

12 You may agree with that law or you may disagree with it,
13 but you all took oaths as jurors to follow laws, and the law
14 is that you can't give the Hamas no matter what part of Hamas.

15 Now, over the course of the trial you are going to hear a
16 lot of evidence, and when it comes time to go back into the
17 jury room to deliberate, you may want to have some notes to
18 refer to, so I recommend that you may want to take notes
19 during this trial. And Judge Solis said that that would be
20 permissible, and he will instruct you on how to use those
21 notes. But you are going to hear a lot of names and a lot of
22 things that may be unfamiliar, so my recommendation would be
23 that it would be helpful for you to have notes.

24 Remember the Defense lawyers told you last week that all
25 the Defendants here are Palestinian and they are Muslim. But

1 in this country it doesn't matter where you come from and
2 doesn't matter what religion you follow. If you live here you
3 have to follow the law.

4 And the evidence will show over the course of many years
5 these Defendants broke the law, and they did that by
6 conspiring to raise money for Hamas and by sending that money
7 into the hands of Hamas.

8 I want to spend a little time with you this morning
9 giving you a preview of how the Government is going to present
10 its case. The first part of the Government's case is going to
11 introduce you to Hamas, what it is, what it stands for, how it
12 works, and we will present documents and witnesses that will
13 tell you about why, even though Hamas operates over in the
14 Middle East, why we should care about that here in the United
15 States and why it is important that what happens in the Middle
16 East is important to the United States.

17 And the first part of our case we are going to show you
18 how the Holy Land Foundation was born, how it became
19 ultimately the financial arm for Hamas in the United States.

20 The second part of the Government's case is going to take
21 you across the ocean, and it is going to show you where that
22 money went. And you will see wire transfers and checks and
23 show that money went overseas to organizations in the West
24 Bank and Gaza. And we will show you that those organizations
25 were controlled by Hamas; that the people who ran those

1 organizations were people in the Hamas organization, and that
2 the Defendants knew that; that they knew these people and they
3 knew the money that they were giving to these organizations
4 was going into the hands of Hamas.

5 So that is the essential outline, two parts of the case
6 that the Government is going to present to you.

7 Now, before I tell you a little more about Hamas, I want
8 to just introduce you to the geography of the region, because
9 it is important that you know geographically what we are
10 talking about during this trial.

11 I have here -- I am going to walk away from the
12 microphone for a moment. This is a map of the Middle East.
13 And you can see over here in this red area is the state of
14 Israel, and it also shows the West Bank and Gaza Strip, the
15 Palestinian territories. And you can see this is surrounded
16 by a lot of big countries. Over here to the right is Jordan,
17 Egypt down here to my right, Saudi Arabia, Iraq, Syria, Iran
18 is up here. Okay? Small countries surrounded by a lot of big
19 countries.

20 Now, here this is a blown up map of Israel and the
21 Palestinian territories. To give you an idea of the size of
22 the area we are talking about, this entire country from the
23 top to the bottom is smaller to the state of New Jersey. It
24 would run from top to bottom about from Gainesville on the
25 Texas/Oklahoma border to Austin.

1 Now, the width, if you look over here, you will see Tel
2 Aviv, the largest city in Israel. If you were to go from Tel
3 Aviv to the border of the West Bank, the Palestinian
4 territories, that would be about the distance from this
5 courthouse to Texas Stadium, a little over ten miles.

6 You can see also -- On this map you can see the West
7 Bank, the Gaza Strip, and we will be referring to those as the
8 Palestinian territories.

9 Now, this tiny strip of land, and whole area, has been
10 the focal point of conflict for a thousand years, and we are
11 not going to solve that conflict in this courtroom during the
12 trial, so I am just going to talk about more modern times
13 starting with World War II.

14 After World War II the British controlled the area that
15 is now Israel and the Palestinian territories, and it was
16 called Palestine. And in 1947 the United Nations partitioned
17 that area into a Jewish area and an Arab area. And Israel
18 became a state in 1948.

19 And there were lots of wars, and I am not going to go
20 into a lot of wars, but there has been conflict for years
21 after that time.

22 And then came 1967, and in 1967 there was a war that
23 affected the geography of the region. In 1967 those bigger
24 countries around Israel amassed their troops on the border and
25 a war broke out, and it was over in six days, and it is

1 sometimes referred to as the Six-Day War.

2 At the end of that war, the end of six days, the map
3 changed a little. Israel occupied the West Bank, which had
4 formerly been Jordan, the Gaza strip which has been Egypt. And
5 the Sinai Peninsula which is down here off to the right of the
6 map, you can't see the whole thing, and also the Golan
7 Heights, that was Syria. And Israel held onto that territory
8 as a security buffer and kept that territory until 1978.

9 In 1978 there was a peace treaty with Egypt, and as part
10 of that peace treaty the Sinai Peninsula went back to Egypt.
11 And then later on in the early '90s, there was a peace treaty
12 with Jordan, and Jordan relinquished its claim to the West
13 Bank and signed a peace treaty with Israel. Israel continued
14 its presence in the West Bank.

15 And then came an event in the early '90s called the Oslo
16 Accords. And the Oslo Accords were between the Palestinians
17 and the Israelis, who on their initiative, with the help of
18 the Norwegians, and the United States came into the game a bit
19 later, but that agreement essentially set out a framework for
20 a future peace and a future Palestinian state. So the idea
21 from the Oslo Accords was that it would be a framework so that
22 there would be a Palestinian government, ultimately a state,
23 and peace between the Palestinians and the Israelis, a
24 resolution.

25 Now, the Oslo Accords created what was called the

1 Palestinian Authority, and the Palestinian Authority was
2 headed by Yasser Arafat. And his party was called the
3 Palestinian Liberation Organization. And the Accords gave the
4 Palestinians self-rule in the areas of the West Bank and Gaza
5 according to a complicated agreement, but there was self-rule.
6 So the Palestinian Authority started governing those areas.

7 Now, the evidence will show you during this case that
8 although this area is far away from here, it directly affects
9 our political and our military interests here in the United
10 States. So what happens in the Middle East is actually
11 important to us here in this courtroom.

12 Now, I would like to talk to you for a moment about
13 Hamas. You heard already a little about it. Hamas is an
14 Arabic acronym meaning the Islamic Resistant Movement, sometimes
15 known as The Movement, and it has a plan to create an Islamic
16 state in all of this area, essentially wipe the state of
17 Israel off the map. That is its goal. Its founder was a man
18 named Sheik Ahmed Yassin. He was considered to be Hamas'
19 founder and spiritual leader. You will hear his name a lot
20 during the trial. And he is a distinctive figure. You will
21 see he was a paraplegic and he was in a wheelchair, and he
22 will be recognizable to you throughout the trial.

23 Sheikh Yassin seized on some events in the late 1980s
24 when there was a spontaneous uprising amongst the Palestinians
25 that -- Actually it was ignited by a car accident, and there

1 was a spontaneous uprising. And the Palestinians essentially
2 revolted against Israeli occupation. And Sheikh Yassin took
3 that opportunity to establish Hamas, the Islamic Resistance
4 Movement.

5 And sometime after that, Hamas published its charter, and
6 you will see evidence in the trial, you will see the charter
7 and what it says, and the charter makes it very clear that the
8 goal of Hamas is violent jihad. The goal is to take over the
9 state of Israel and create in its place an Islamic state.

10 It also says in the charter that peace agreements,
11 international negotiation conferences, all of that is a waste
12 of time, futility, because peace is not possible until Hamas
13 achieves its goal of creating an Islamic state over the entire
14 area of what is now Israel.

15 Now, Hamas, as you will see, has two wings, and we have
16 talked about those a little bit earlier. It has a military
17 and it has the social. And then on top there is essentially a
18 political wing. And the political wing sits outside the
19 territories in Damascus. That is where the leadership of
20 Hamas is. The head of Hamas right now is a man named Khalid
21 Mishal, and you will hear his name quite a bit, too. In fact
22 the Defendant Mufid Abdulquader is Khalid Mishal's half
23 brother.

24 Khalid Mishal is in Damascus, and is number two is a man
25 named Mousa Abu Marzook. And you will hear his name quite a

1 bit as well. Mousa Abu Marzook was in the United States for
2 quite some time, and I will get to his role in a moment.

3 And I want to talk to you first about first Hamas'
4 military wing, what they do. What they do is they terrorize
5 the local population through random violence. That is their
6 job. They also have a part of the military wing that kills
7 Palestinians, anybody who is suspected of cooperating with the
8 Israeli government, being a collaborator, is executed by
9 Hamas.

10 And Hamas was one of the first terrorist organizations to
11 really perfect the use of suicide bombings. The way that
12 would work is Hamas operatives would be smuggled into Israel
13 with suicide belts with explosives or vests that have
14 explosives, and they would find a place that is crowded with
15 civilians, like a bus stop or a restaurant or a shopping mall,
16 and they would ignite themselves, blow themselves up.

17 Sometimes these explosive vests would be packed with
18 nails and screws so that the explosive impact would maim and
19 injure as many people as possible.

20 And sometimes these attacks would be sequenced so you
21 would have a suicide attack, someone blows themselves up, and
22 someone rush to the scene to assist the wounded, and then
23 another person would blow themselves up to maximize the
24 casualties.

25 You will hear a phone call that will be played during the

1 course of this case between two of the Defendants, Defendant
2 Abdul Odeh and Defendant Mohammad El-Mezain, and there will be
3 a phone call after one of these terrorist attacks where
4 Defendant Odeh will call up and he will talk very excitedly
5 about what he says is a beautiful operation.

6 Now, the other part of Hamas that would be a big focus of
7 this trial is the social wing, and that is in fact, the
8 evidence will show, what the Hamas leadership considers to be
9 the most important part of Hamas, because that is the part of
10 Hamas that builds popular support. That is where the biggest
11 part of -- That is where they get the most money coming in.

12 That is where they are able to indoctrinate the
13 population. That is where they are able to reach out and
14 essentially mold people, including children, into future Hamas
15 supporters. You can sort of think about the social wing of
16 Hamas as it is Hamas' investment in the future. Without the
17 support of the people, without being able to indoctrinate the
18 population, Hamas would die out ultimately.

19 And what is it the social wing does? It runs schools,
20 clinics, hospitals, hands out food parcels, it provides
21 stipends for Hamas prisoners who are being jailed by either
22 the Palestinian Authority or by the Israelis. It will support
23 the families of people who have been killed or injured as part
24 of the conflict with Israel. And essentially what they are
25 doing is they are reaching out and winning over the hearts and

1 minds of the population.

2 Now, I want to talk for a moment about the schools, the
3 summer camps, the kindergartens. Hamas runs all of these
4 things. There are Hamas kindergartens, Hamas summer camps.
5 And you will see evidence of what goes on in the schools and
6 summer camps. What goes on is there is an indoctrination
7 where Hamas essentially teaches a culture of hate. Children
8 are taught to hate Israelis. They are taught to love
9 martyrdom. They are taught to revere suicide bombers. This
10 is what goes on in these institutions.

11 So when you talk about the social wing of Hamas, we are
12 not talking about necessarily benevolent activity. We are
13 talking about an indoctrination, a plan, an investment in
14 Hamas. Hamas is grooming the next generation.

15 Another thing Hamas achieves through this social wing is
16 by garnering the popular support. It gains power, essentially
17 gains power and the ability to displace the existing
18 government, the Palestinian Authority. And you will see that
19 Hamas is actually succeeded in that goal in that right now
20 Hamas has taken over the Gaza Strip. So you have a situation
21 now where Hamas runs the Gaza Strip and the Palestinian
22 Authority runs the West Bank.

23 Now, what is the effect of all this violence that Hamas
24 engages in? Well, it has the effect of destabilizing the
25 region, and it has the effect of preventing the Palestinians

1 and the Israelis from reaching a negotiated peace. And that
2 is exactly what Hamas wants, because Hamas doesn't want peace.
3 That is what its charter says. Hamas wants an Islamic state
4 in all of Israel. There is no room for compromise. And Hamas
5 believes in violent jihad.

6 The United States, on the other hand, is interested in
7 negotiated peace. It wants that region to have peace, and
8 that is in the interest of the United States. And you will
9 hear about how war between Israel and the countries in the
10 Middle East undermines U.S. policy interests, both
11 economically, politically, and militarily.

12 And so the evidence will show that in 1995 President
13 Clinton signed an executive order, and the executive order is
14 sort of like a law except it doesn't have to go through the
15 Congress. The President can sign it on its own. President
16 Clinton signed an executive order that designated Hamas a
17 specially designated terrorist organization, and he did that
18 because Hamas represented an obstacle to peace.

19 And in 1995, remember the Oslo Accords had been signed in
20 about 1994, 1993, and there was a wave of violence, and that
21 violence was undermining the efforts to implement the Oslo
22 Accords and to have peace in the region.

23 So President Clinton in that executive order essentially
24 declared a national emergency, and he said that anybody who is
25 an obstacle to peace, as designated in that executive order,

1 it was against the law to give money to them, because he
2 recognizes that money is what terrorist organizations are all
3 about. They need money to operate.

4 In that executive order it is also specified that no
5 humanitarian aid, no charity, no money of any kind can go to a
6 designated organization. On the back of that executive order
7 there is an annex, and it lists the terrorist organizations
8 that are subject to that order, and it includes Hamas.

9 And then in 1997, a couple of years later, Congress
10 passed a similar kind of law that made Hamas a foreign
11 terrorist organization, an FTO that is sometimes referred to.
12 And similarly, it is illegal to give any money to Hamas,
13 including humanitarian and charitable assistance.

14 I want to talk for a moment about how the Holy Land
15 Foundation came into being and how it ended up right here in
16 the United States.

17 The Hamas charter says in the charter that Hamas was
18 borne out of the Muslim Brotherhood. You heard a little bit
19 the Muslim Brotherhood. It was an organization that started
20 in the late '20s in Egypt. And Sheik Ahmed Yassin, who
21 founded Hamas, he was a member of the Muslim Brotherhood. And
22 the Muslim Brotherhood is a global movement, and there are
23 Muslims of all nationalities that belong to the Muslim
24 Brotherhood. And their goal, the Muslim Brotherhood goal, is
25 to create essentially a global Islamic state, no more -- no

1 Western civilization; just replace it with an Islamic system.
2 And that is its long term goal. And the Muslim Brotherhood is
3 a very patient organization. Its ultimate goal is a global
4 Islamic state.

5 Now, in the late 1980s the Palestinian part of the Muslim
6 Brotherhood was the dominating faction, and the international
7 Muslim Brotherhood, there is a governing body, and the
8 international Muslim Brotherhood directed, once Hamas was
9 formally declared, that all the countries where they have
10 Muslim Brotherhood organizations should set up a Palestine
11 Committee. That was a directive from the international body
12 of the Muslim Brotherhood. So all the countries around the
13 world that had Muslim Brotherhood organizations created these
14 Palestine Committees. And what was the purpose of the
15 Palestine Committee? It was to support Hamas. And that --
16 You will see documents, and you will see evidence that will
17 say that expressly. The purpose was to support Hamas.

18 And in the United States there were Muslim Brotherhood
19 organizations that already existed. And I mentioned the name
20 of Mousa Abu Marzook. He became the head of the Palestine
21 Committee here in the United States. At the time he was
22 actually number in the political bureau of Hamas. Marzook was
23 actually here as a student, and he was the head of the
24 Palestine Committee.

25 And the Palestine Committee, in order to carry out its

1 mission of supporting Hamas, it encompassed three
2 organizations. It needed organizations for what you will see
3 are media, men, and money. Those are the elements, the things
4 that the Palestine Committee thought it needed to have to
5 support Hamas.

6 And for the media side of things, which was propaganda,
7 spreading Hamas' word, getting the message out, they had an
8 organization called the Islamic Association for Palestine.
9 And the Defendant Ghassan Elashi was part of that
10 organization. And the Islamic association of Palestine, or
11 IAP I will call it, they are the first organization to publish
12 the Hamas charter in English, and they would publish Hamas
13 communiques and they would have conferences, and they were
14 essentially the propaganda arm of the Palestine Committee.

15 There is another organization called the UASR, the United
16 Association for Studies and Research, and that was purported
17 to be a sort of think tank. It was meant to win the battle of
18 ideology and win people over to Hamas, and it was also a form
19 of propaganda.

20 And then there was the money side of the equation, and
21 the money, the most important part of this, was assigned to
22 the Holy Land Foundation. The Holy Land Foundation was called
23 something else. It was called the Occupied Land Fund at that
24 time. And the Occupied Land Fund's mission, as you will see
25 from the evidence in the case, was to support Hamas. There

1 will be no doubt about that.

2 Now, the Occupied Land Fund was actually started by the
3 Defendant Shukri Abu Baker at the time when he lived in
4 Plainfield, Indiana. And he started working with the Occupied
5 Land Fund in Indiana. It was formally incorporated in Los
6 Angeles in California with the Defendant Shukri Abu Baker and
7 Ghassan Elashi and Mohammad El-Mezain filed articles of
8 incorporation creating the Occupied Land Fund formally in Los
9 Angeles. And a few years it changed its names to the Holy
10 Land Foundation, and moved right here to Richardson, Texas.

11 Across the street from the Holy Land Foundation there was
12 a company called InfoCom, and that was a computer-related
13 business that Ghassan Elashi had. And you will see the
14 evidence will show that a lot of Holy Land's records were
15 actually stored at InfoCom across the street, so you will hear
16 about InfoCom quite a bit during this trial as well.

17 Now, remember I mentioned Mousa Abu Marzook, head of the
18 Palestine Committee. He shared a bank account with a man
19 named Ismail Elabarasse, and you will hear his name as well.
20 Ismail Elabarasse actually lived in Virginia, and he had a lot
21 of documents in his house about the Palestine Committee. And
22 the FBI got a search warrant, and they were able to get these
23 documents. And you will see many of them during this trial.
24 And those documents will show you organizational charts and
25 member lists and minute meetings and all kinds of things,

1 records about the Palestine Committees. And you will see many
2 of the names of the Defendants, and you will see the Occupied
3 Land Fund. And those documents will be very important to you
4 because they establish why the Holy Land was created, what its
5 mission was, why it existed.

6 Now, remember it didn't become illegal to support Hamas
7 or to fund Hamas until 1995, and you will see that a lot of
8 these documents are before 1995, so why do they matter? Why
9 should you see them? Those documents are important not
10 because the documents themselves are the crime, but because
11 they show you the knowledge and intent of the Defendants.
12 They show you what the true purpose of the Holy Land
13 Foundation was. And you can evaluate the evidence that you
14 see in this trial with that knowledge and with that evidence
15 that you will have seen about why the Holy Land was created
16 and what it was all about. It was created to support Hamas.

17 Now, how did the Holy Land go about raising money? Well,
18 the evidence will show that Holy Land took full advantage of
19 all the freedoms available to us in this country and to make
20 themselves look just like a regular charity. And you will see
21 that one of the things that they did was they had festivals
22 and they had conferences. And you will see the Defendant
23 Mohammad El-Mezain, he was one of the original incorporators,
24 he lives in New Jersey, and his talent was as an orator,
25 as -- He was a great speech maker. And he is actually an

1 emam, which is a Muslim religious leader. And you will see
2 him and see videotapes of him raising money at Hamas
3 fundraisers, Holy Land fundraisers, and will be raising money
4 for Hamas. And you will see him give fiery speeches, and then
5 people in the audience will donate jewelry, cash, checks,
6 whatever it is, they will come up and they will donate it, and
7 that is one way the Holy Land Foundation raised money.

8 Another way they raised money is they had a musical band,
9 the band of Mufid Abdulquader would come and play at these
10 fundraisers, and this musical band sang songs glorifying Hamas
11 and inspirational sort of music that inspired people to give
12 money to Hamas. And again, you will see a lot of these
13 videotapes over the course of the trial. In fact, some of
14 these tapes were actually found by the FBI buried in the
15 backyard of one of the former band member's home in Virginia.
16 The FBI was able to reconstruct some of those tapes, and you
17 will see them.

18 Now, another way the Holy Land Foundation raised money is
19 it brought in speakers from overseas. And you will see lists
20 of overseas speakers that would come in and raise money for
21 the Holy Land Foundation. And many of those speakers were
22 Hamas leaders, others were from other radical groups to
23 espouse radical ideologies, and they would come into the
24 United States and appear at these conferences, and they would
25 give speeches, and again people would donate money.

1 Sometimes there would be conference calls where you would
2 have a speaker who would be on the telephone and people could
3 have a pass code or access code, and you could conference into
4 these conference calls and hear the inspirational talk and you
5 could donate money that way.

6 Another way you could raise money is through orphan
7 sponsorships where you could sponsor an orphan in Palestine on
8 a monthly basis or on a periodic basis, and you would get a
9 little package and you would get to meet that orphan and you
10 could send regular payments that way through this orphan
11 sponsorship. And the Defendant Abdul Odeh, who was in charge
12 of the New Jersey office, he did some of those orphan
13 sponsorships.

14 Now, for all of these donations, and you will see this
15 also through the evidence, you could -- People who donated
16 could take a tax deductible -- It was a tax deductible
17 donation. Because remember, Holy Land incorporated as a
18 regular American charity, so when you gave money to it you
19 could take that off your income tax. And you will see
20 documents like that that say send your tax deductible donation
21 to the Occupied Land Fund, or to the Holy Land Foundation.

22 Now, you are going to hear about an important meeting of
23 the Palestine Committee that took place in Philadelphia, and
24 the context for this meeting I mentioned earlier, and that was
25 the Oslo Accords. If you recall, the Oslo Accords was that

1 agreement that the Palestinians and Israelis were trying to
2 work out to create a road map for a peaceful co-existence.
3 And this was a crisis for Hamas and a crisis for the Palestine
4 Committee, which is set up to support Hamas. And why is that
5 a crisis? Because remember, Hamas is against peace. Hamas
6 doesn't want a negotiated settlement, because a negotiated
7 settlement between the Israelis and the Palestinians would
8 mean that there would be a Palestine and there would be an
9 Israel, and that is unacceptable to Hamas.

10 So many of the Defendants here and the Palestine
11 Committee met in Philadelphia at the Courtyard by Marriott
12 Hotel, and the FBI found out about that meeting. And they
13 went and got a search warrant, and they got a warrant to
14 listen in on the meeting. And so you will see during the
15 course of this trial transcripts of that meeting, and you can
16 see for yourself what was going on.

17 During that meeting the participants talked extensively
18 about how to defeat the Oslo Accords, what would be the best
19 way to make sure that peace didn't happen.

20 They also talked about how they needed to hide their
21 support for Hamas, and they directed the participants in the
22 meeting to not say Hamas but to say Samah, which is Hamas
23 spelled backward.

24 And you will hear Shukri Abu Baker talk at that meeting,
25 you will read the transcript, and he talks about how important

1 it is to make sure that the Holy Land Foundation maintains its
2 status as a legal American organization, because it can't
3 afford to get caught.

4 Other participants talk about the Holy Land Foundation as
5 a front organization. Now, a front organization is an
6 organization that doesn't -- It doesn't appear or appears to
7 be something that it is not. And those words are used in the
8 Philadelphia meeting. And they talk about how important it is
9 to make sure that Holy Land is not exposed because its mission
10 of raising money is so important.

11 Another thing they talk about at that meeting are the
12 particular committees in the West Bank and Gaza where they
13 send their money. They talk about those committees, they talk
14 about them by name, so they know where their money is going
15 when they send it overseas to these committees.

16 They also talk about how they should communicate with the
17 American public. They say things like, "You can't talk to the
18 Americans about our true objectives, you can't talk to them
19 about Palestine, so we have to talk to them about things they
20 will relate to like human rights. You have to talk to
21 Americans differently."

22 And then you will see the words of Shukri Abu Baker when
23 he says "War is deception." He says, "We are fighting our war
24 with a kind heart. Deceive. Camouflage. Deceive your
25 enemy." You will see those words.

1 So this meeting, which was in 1993, why is it important?
2 Okay. It wasn't illegal to have that meeting. But what it
3 tells you is what was in these Defendants' minds. It is their
4 knowledge and it is their intent. That is why that meeting is
5 so important.

6 Now, how did the money get from the Holy Land Foundation
7 overseas to the hands of Hamas? Remember, this is an
8 organization that is trying to not be exposed. It can't just
9 write out a check that says "Pay to the order of Hamas." It
10 can't do that otherwise everybody will know they are sending
11 money to Hamas. So what do they do? They send the money over
12 to the social institutions that are controlled by Hamas. And
13 the social wing of Hamas has their own charitable
14 organizations that are in the West Bank and Gaza. And the
15 leaders of those charitable organizations were members of
16 Hamas, the people who controlled those committees, and the
17 Holy Land Foundation and these Defendants knew who those
18 people were, and you will see from the Holy Land Foundation's
19 own documents that they knew these people and that they knew
20 they were Hamas, and yet they sent the money to these
21 organizations. And that is how they got money into the hands
22 of Hamas.

23 Now, there are some things that are important to
24 understand about these committees, and this is really what our
25 second half of our case will focus on. Now, you will see that

1 a lot of these committees, some of them are called zakat
2 committees, and they are called zakat committees because zakat
3 means charity. And it is an obligation in Islam to give
4 charity. So there are these organizations that collect that
5 charity and distribute it.

6 And the evidence is going to show that some of these
7 organizations pre-dated Hamas. They actually existed before
8 Hamas ever existed. What Hamas did is it recognized how
9 important it was to have a social infrastructure, and it
10 infiltrated those committees, it got its people inside those
11 committees. And that was a gradual process. From the late
12 '80s early '90s on it got its people into the committees so
13 Hamas controlled the committees.

14 So even though some of these committees actually existed
15 prior to the time of Hamas, Hamas took them over. There were
16 some committees that Hamas created with Sheik Ahmed Yassin,
17 the leader of Hamas. He established organizations in the Gaza
18 Strip. They were his organizations. They were Hamas
19 organizations. There were others that had existed for a long
20 time prior and they were infiltrated by Hamas members.

21 Now, you are also going to see that some of these
22 committees had licenses from the Palestinian Authority. You
23 may see some of those licenses in this case. But don't be
24 fooled, because those licenses, the evidence will show, were
25 absolutely meaningless, because the Palestinian Authority by

1 the time it took over in 1994 and it started governing the
2 territories, these committees were already controlled by Hamas
3 and there was very little the Palestinian Authority could do
4 about it. So while there was a piece of paper on the wall, it
5 was meaningless.

6 You are also going to hear evidence that the relationship
7 between the Palestinian Authority and Hamas was a complicated
8 one. Hamas was gaining popular support, and the Palestinian
9 Authority was perceived as corrupt and weak. And it was
10 politically impossible for the Palestinian Authority to do
11 anything about these committees. Hamas already had a strangle
12 hold on them. But you will see evidence that from time to
13 time the Palestinian Authority did take action and did shut
14 down some of these committees, usually under pressure from the
15 United States, but then they would quickly re-open.

16 It wasn't really until last year, you will hear evidence,
17 that these committees finally the Palestinian Authority took
18 decisive action to close and reorganize these committees and
19 the entire zakat committee structure in the West Bank.

20 Now, you are also going to hear evidence that these zakat
21 committees and charitable committees in the West Bank and Gaza
22 are not separately designated by the United States government.
23 Okay? You will see a list of specially designated
24 organizations from the Department of Treasury. You are not
25 going to find any of these committees on that list. But it

1 doesn't matter. Why? Because Hamas is designated. Okay.

2 Terrorist organizations are like a cancer. You can
3 blight it out in one place and it pops up in other places. It
4 is impossible, the evidence will show, that it is impossible
5 for the United States government to separately designate every
6 single committee, every single charitable organizations.

7 It would be easy if Treasury Department, the United
8 States government tried to close down one, to just move across
9 the street and put up a sign with a different name. It is not
10 possible to designate everything. But when Hamas is
11 designated, that means you can't give to any organization that
12 you know is Hamas, and these Defendants knew that these
13 committees were controlled by Hamas. You will see that
14 through the evidence. They knew who the people were. They
15 knew the committees. They talked about these committees in
16 Philadelphia by name. You will see documents from Mr.
17 Elabarasse's house that lists these committees by name and
18 says, "These committees are ours."

19 You will see evidence that they knew where they were
20 sending their money. And yet they put that money into the
21 hands of these committees, which was putting money into the
22 hands of Hamas, and that is illegal.

23 Now, you may also see that the United States government
24 made a few mistakes on occasion. We have an agency in the
25 U.S. government that gives out charity in troubled places

1 abroad, and you will see evidence that on occasion the United
2 States government gave money to some of these committees. But
3 again, those are mistakes. The United States government is
4 learning about how to uncover these sorts of organizations and
5 how to understand where the terrorist organization is
6 controlling another organization. Okay? The difference is
7 that the United States government didn't intend to give to
8 Hamas. These Defendants intended to give to Hamas, and the
9 evidence will show that, again, that they knew where the money
10 was going.

11 And remember the evidence will show what the mission of
12 the Holy Land Foundation was. The mission was to support
13 Hamas.

14 Now, I have three requests that I am going to make of all
15 of you during the course of this trial. The first one I
16 already touched on, and that is that I would recommend that
17 you take notes, because even this morning you have probably
18 heard more names than you can possibly remember. So it will
19 be helpful to you to be able to write those down so you will
20 have them when you go back for deliberations.

21 The second thing I am going to ask for you is to think
22 like a terrorist organization. What does that mean? This
23 case is about unraveling deceptions. You are going to hear
24 evidence that one or more of these Defendants lied on multiple
25 occasions. You are going to hear that they lied on travel

1 documents, that they lied in sworn court statements, that they
2 lied to the media, that they lied to the American public.
3 There is a lot of deception. Remember the words of Shukri Abu
4 Baker, Defendant Abu Baker, in Philadelphia. He said, "War is
5 deception." So you have to look at the evidence in that way.
6 You are unraveling a deception. So try to think like a
7 terrorist organization. What would they do? A front
8 organization trying to survive trying to keep raising money
9 without being detected.

10 The last thing I am going to ask you to do is to listen
11 to all the evidence carefully from both sides and the Court's
12 instructions that he will give you at the end of the case, and
13 focus on the law, because you are going to hear a lot of
14 things to try to distract you from the law. When you hear
15 about Israeli occupation and hear about Israeli settlements,
16 and you hear and see pictures of children with backpacks and
17 you will hear about the First Amendment, just ask yourself
18 what does that have to do with the law that says you can't
19 give charity to a terrorist organization? Keep that in mind.

20 Now, I am going to make one prediction, and that is that
21 at some point during this trial one of the lawyers from the
22 Defense is going to stand up and say, "These men are not
23 accused of a single act of violence." You might hear that.
24 But remember that money is everything to a terrorist
25 organization. Money is the life blood of a terrorist

1 organization. And these men put money into the hands of
2 terrorists, and that terrorist organization commits heinous
3 acts of violence.

4 So I want to end where I started, which is that this case
5 is not about charity. It is about this law. In the United
6 States you cannot give money to a terrorist organization, even
7 if it is charity, for any part of that terrorist organization.
8 So while this is a big case and a bit of a long case, that is
9 really all there is to it.

10 When you hear all the evidence, I am confident that you
11 will apply the law and that you will find each of these
12 Defendants guilty as charged in the indictment.

13 And I thank you for your time, your attention, and for
14 your service as jurors.

15 THE COURT: Thank you.

16 Ms. Hollander?

17 MS. HOLLANDER: Thank you, Your Honor.

18 Good morning.

19 This case is about delivering charity to people who
20 desperately need it.

21 The Prosecutor was right about one thing--not one of
22 these men, including my client Shukri Abu Baker, is charged
23 with committing a single act of violence against anyone. That
24 is not distraction. That is reality.

25 I would like to start by introducing you to someone Ms.

1 Duncan my co-counsel and I have come to know, and that is
2 Shukri Abu Baker. You are going to learn in this case that he
3 has dedicated his life to helping poor children, suffering
4 people around the world, particularly the families and
5 children of Palestine, and you are going to learn that they
6 are among the poorest and neediest people in the world.

7 It is true that the Holy Land Foundation was everything
8 to Shukri and he was everything to it. It was his life, it
9 was his love, and it was his hope for the children of
10 Palestine.

11 Now, the Prosecutor just said these men are Palestinian,
12 but let's start there with what is reality, because that is
13 not entirely true. Shukri Abu Baker is an American citizen.
14 He wasn't even born in Palestine. He was born in Brazil. His
15 mother is Brazilian. His father is Palestinian. He was born
16 in South America. His mother's family are all Brazilian and
17 they are all Catholic. His father's family are all Muslim
18 from Palestine. So as a really multi-cultural family, maybe
19 it is correct to call him a Palestinian-American, or perhaps a
20 Palestinian-Brazilian-American, but that is what reality is.

21 He worked full time at the Holy Land Foundation every
22 single day from the day it opened until it closed in 2001. He
23 was responsible for it and he accepts that responsibility,
24 because he believes so strongly in it.

25 But we have to go back to 1948 and talk about it a little

1 more than the Prosecutor did to understand what happened. She
2 said that Israel was created out of this land that was
3 Palestine, and showed you a map of Israel and the Middle East.
4 And that is a helpful map, but it made it sound like Israel
5 was just created out of this empty land. Well, that is not
6 exactly what happened.

7 But let's start a little bit with size, because she told
8 you a little bit about size, and I want to show you something
9 that we are all very familiar with here, and that is just to
10 give you some perspective here, this is what this would look
11 like if it were in the state of Texas. And it is pretty much
12 what she said, but here is the whole area. This part is
13 Israel, and this part, we are going to learn, is the part that
14 Israel occupied since 1967, but the whole thing would fit into
15 this tiny little bit of Texas.

16 And of course it is a long ways away, but what happened
17 in 1948 is when the country of Israel, we call it the state of
18 Israel but it is a country, the country of Israel was created.
19 Jews came from all over the world to settle there. But there
20 were already people there. There were the Arabs, Muslims, and
21 Christians who were already living there who had lived there
22 for generations, many of them, and they had homes and farms
23 and olive groves and animals and children. And as a result of
24 the conflicts and the wars around the creation of Israel,
25 nobody knows for sure, but somewhere between 750,000 and

1 1,000,000 Palestinian Arabs, Muslims, and Christians fled or
2 were forced to leave Israel at that time. They ended up in
3 refugee camps, and many of these camps still exist today.

4 Now, these camps, these refugees created a huge
5 humanitarian crisis, which she also didn't tell you about.
6 That is part of the reality. It was so overwhelming that the
7 United Nations had to create a special organization. It is
8 called the United Nations Works and Relief Organization. And
9 it is usually known by its initials UNWRO. And it had to
10 create that just to deal with these refugees. Many of these
11 refugees still live in the Gaza Strip and in the West Bank,
12 the area we will call the occupied territories or we also call
13 Palestine.

14 And these are some of the people who Holy Land helped to
15 survive, to live, not to live better, but just to live--the
16 people in these refugee camps. I just want to show you a
17 picture of one refugee camp that exists today. This is a
18 picture of the refugee camp, and the gentleman where my finger
19 is, you will see that again, he had the Holy Land logo because
20 he was taking some supplies into the refugee camp.

21 But UNWRO, the UN couldn't provide everything that
22 Palestinians need to survive, and the Palestinians -- those
23 Palestinians and other Muslims who had more money tried to
24 help themselves through the local charities.

25 And zakat is not just the name of a committee. Zakat is

1 a fundamental tenant of the Muslim faith. It is an Arabic
2 word that means something like charity or tithing, but Muslims
3 are required by their religion if they have any funds to give
4 to those less fortunate. But when they want to donate they
5 have to figure out who are the neediest people, so
6 historically they created committees, local volunteers who get
7 together to help decide how to donate the money so that it is
8 accountable and they are accountable. And you will see their
9 books are audited, they are accountable to the government, so
10 the money really goes where it is supposed to go.

11 You are going to hear a lot more about this. She said
12 that the evidence is going to show these zakat committees are
13 controlled by Hamas, and that is simply not true. They were
14 started long before Hamas, even before Israel existed, and you
15 are going to learn a great deal more about them.

16 And their licenses do matter. That is reality, not
17 deception. They have licenses. They have registration. They
18 are audited. They are very significant organizations
19 throughout the Muslim world, not just in Palestine.

20 But they are particularly important in the West Bank and
21 Gaza, because for many years there was really no functioning
22 government so there was no way to provide services for the
23 people who need them. And the people were desperately poor,
24 and the zakat committees are known to be honest and fair and
25 could be trusted.

1 You will also learn that the United States government is
2 the largest single contributor to this UN organization that
3 provides for the same people and worked with the same
4 organizations that Holy Land worked with.

5 Now, the Prosecutor told you again that there was another
6 war that started in 1967 known as the Six-Day War. And this
7 is a very significant war because that is when Israel took
8 over the occupied territories. That is when Israel began to
9 occupy not just this land that it got in 1948, but all the
10 rest of this land over here, this kidney-shaped area and the
11 Gaza Strip which is right here. And it is called the occupied
12 territories because Israel occupies it. And that is very
13 significant. Now, that is where the refugees were living from
14 the first war, and now there were more people, more
15 Palestinians who were living there who had also been living
16 there.

17 This occupation has led to tremendous economic suffering
18 and to another humanitarian crisis. And to understand
19 Shukri's intent and his state of mind in devoting his life to
20 giving money and charity to Palestine, you have to understand
21 this suffering and its causes. That is reality.

22 Under international law you will learn, that the U.S.
23 also supports, Israel was not supposed to move its own people
24 onto this land that it occupied. It had two obligations under
25 international law. One is not to move its own people on to

1 take over the land, and to provide for the people. If it is
2 going to occupy the land it has to provide food and water and
3 supplies.

4 Well, Israel started immediately after 1967 moving its
5 people in, taking over land from the Palestinians, and has
6 failed miserably in providing for the Palestinians. And that
7 is when Israel built these settlements. That is what they are
8 called--settlements. They are actually actual cities. Israel
9 moved Jewish people into these settlements, and that meant
10 that the Palestinians lost land. And the Palestinians lost
11 some of their livelihood, and their economic situation
12 worsened.

13 You will learn that the United States has repeatedly
14 asked Israel to stop building these settlements. And they
15 figure into this case in many ways, because Palestinians work
16 their land they have to be able to get to their land, their
17 children have to be able to get to schools, sick people have
18 to be able to get to hospitals. But once the settlements were
19 built, then Israel built roads around to get from the
20 settlements for the settlers, the Jewish settlers, to get
21 where they wanted to go. These are called bypass roads. They
22 had big walls around them, and the Arabs are not allowed to
23 drive on those roads.

24 Well, the roads, too, cut through their land because
25 Israel took land to make those roads. And in addition, the

1 Palestinian roads are bad and they have to wander around these
2 roads that are now all over the West Bank to get where they
3 need to go. So there are people who a house is on one side of
4 the road and their olive groves are on the other side, and
5 instead of being five minutes away it may be a day's drive to
6 get to where they have to go.

7 This created another need that Shukri and Holy Land
8 sought to fill, and it added to the anger and resentment
9 against the Israelis. Then Israel created checkpoints to
10 protect their settlements and their bypass roads, and these
11 checkpoints are all over the West Bank so that Palestinians
12 who need to go to school or hospitals or need to go to work
13 have to wait in long lines, and sometimes can't get where they
14 need to go.

15 This creates another huge humanitarian crisis and other
16 economic crises. Trucks full of produce rot because they
17 can't get through because the checkpoints get opened and
18 closed by the Israelis who have complete power over them.

19 You will learn that one of the things Holy Land did was
20 help provide for local hospitals, because the Israeli
21 hospitals that they provided were abysmal, and people needed
22 local hospitals they could get to without going through the
23 checkpoints.

24 There is going to be no dispute in this case about how
25 desperately poor the people in the occupied territories are.

1 That is the Palestinians. Israel does provide for the
2 settlers. They have all the food and water that they need.
3 They are provided for by Israel. It is the Palestinians who
4 are not.

5 So that is why really we have the Intifada that started
6 in 1987. The Palestinians had taken all they could take. But
7 the resistant took many forms. Certainly some people, young
8 people, threw rocks at the soldiers, but some went on peace
9 marches, some waived Palestinian flags. All of that resulted
10 in people getting arrested. Israelis didn't make distinctions
11 who was throwing rocks and who was on a peace march. So
12 hundreds and hundreds of people were arrested at that time.
13 Some of them were injured by Israelis shooting rubber bullets.
14 People were killed. This raised the anger and it raised the
15 humanitarian crisis that resulted, because people were now in
16 prison and, therefore, children had no fathers to take care of
17 them.

18 And, of course, Israel doesn't have all the legal
19 protections that we have, so people could be detained for a
20 long time without any evidence.

21 The needs of the Palestinian people dramatically
22 increased during this time. That is when Holy Land was
23 created. The Government is trying to convince you that
24 because Holy Land was created at approximately the same time
25 Hamas started, that somehow they are connected, but they are

1 not and you will see that they are not. Holy Land focused on
2 the needs of the people and kept itself out of politics.

3 I want to give you one little example. The Government is
4 going to try to convince you Holy Land supports terrorism,
5 when really it was a legal response to a humanitarian crisis.
6 And I will tell you this very briefly, you will hear more
7 about it, and it was mentioned in the indictment, that there
8 were -- Israel deported 400 men in 1992 and sent them to a
9 wasteland in the middle of the Winter. It is true that Holy
10 Land came to their aid. It is also true that they were never
11 accused of a single crime. It is also true that the United
12 States of America and many other countries in the UN condemned
13 Israel for this act, and finally Israel relented and took the
14 men back. None of them were ever charged. They just simply
15 went back home. But Holy Land the Red Cross, the UN, and many
16 other agencies immediately went to their aid, otherwise they
17 would have starved and frozen to death. This was in 1992.

18 Some of them indeed were members of Hamas, but it was not
19 illegal at that time to provide support for Hamas, and the
20 entire world, including our government, said that these men
21 had to be returned home. Think of that when you hear the
22 evidence about them. There was nothing illegal about giving
23 to charity to members of Hamas in 1992 and that is very, very
24 important.

25 The next thing she talked about was Oslo, and again she

1 didn't exactly tell you the reality. This was not a peace
2 agreement. It was not intended to be. It wasn't called that.
3 It is called the Oslo Accords. Nor was it an agreement
4 between two countries. The Palestinians agreed to recognize
5 the country of Israel, but Israel did not agree to do anything
6 other than negotiate with the Palestinians, and Israel did
7 not, and to this day does not, agree to the creation of any
8 part of the occupied territories being a Palestinian state.

9 The Prosecutor focused on how Hamas opposed Oslo, and
10 that is true, but there were many, many others who opposed it.
11 Palestinians, Arabs, Christians, and Muslims opposed it. Many
12 Israelis opposed it for other reasons. Many Americans opposed
13 it.

14 And she said there was a wave of violence after Oslo, and
15 that is also true. But again, one of the things that
16 happened, and it was a horrible thing, was that a Jewish man,
17 one of the settlers in the occupied territories, actually
18 assassinated the prime minister of Israel, Yitzhak Rabin,
19 because he had signed the Oslo Accords and this man was
20 opposed to it. Now, you can be sure that that man, that
21 Jewish terrorist, did not support Hamas.

22 From this perspective of the Palestinians, and from
23 Shukri's perspective, the Oslo Accords was devastating. They
24 were afraid no one was going to pay attention to the people of
25 Palestine; more, that more land would be taken and more

1 Palestinians would be driven into poverty and never have an
2 independent state.

3 It is against that backdrop that Shukri met with other
4 men in Philadelphia. And again she only told you part of the
5 story. They did meet and they talked. And thank goodness we
6 have freedom of speech and freedom of association and freedom
7 of religion in this country, because all they did at that
8 meeting was talk. And it is not a crime to affiliate. It is
9 not a crime in this country ever to speak your mind, even to
10 speak your mind about an illegal organization.

11 The meeting was in a public hotel. Everyone used their
12 own names. They signed in. The Government will show you
13 their airplane receipts to prove who was there. There was
14 nothing secret about it. And it took place before Hamas was
15 illegal.

16 And I just want to very briefly show you some dates to
17 keep in mind. These are the dates to remember. January 1995,
18 before that, that is when the law was enacted that made it
19 illegal to provide material support to Hamas. The second one
20 is in 1997, and Holy Land closed in 2001. Just keep those
21 dates in your mind.

22 You are going to hear things Shukri said during that
23 meeting. He was distressed about what was happening. He was
24 fearful. Even though it was illegal -- It was not illegal in
25 1993. It was two years before the U.S. put Hamas on the list

1 that made it illegal to provide support to it. Israel had
2 been trying to put down the Intifada for a number of years,
3 and Israel arrested people for little or no reason.

4 Shukri had every reason to be fearful of Israel. He was
5 going to go there. His foundation was there. People could be
6 punished for waving Palestinian flags. He had to be careful
7 what he said. And you will hear that he warned people not to
8 use the word Hamas, but you will also see that he said that
9 the charity had to be distanced from anything political. He
10 told the people there, what the Prosecutor told you, "It
11 doesn't matter what you agree with or don't agree with. We
12 have to be legal. We have to be able to provide our support
13 to the people of Palestine. We can't -- Our motto is need not
14 creed." You will hear that again.

15 A few months after Philadelphia tragedy struck first in
16 Palestine and then in Israel. A Jewish-American doctor who
17 lived in one of these settlements walked into a mosque and
18 killed, murdered 29 Muslim men while they were praying. Not
19 long after that, Hamas sought revenge with suicide bombings
20 directed against civilians in Israel. And not long after that
21 the U.S. put Hamas on the list of organizations that were
22 interfering with the peace process. It was at that point in
23 1995 that it first became illegal to provide material support
24 to Hamas.

25 As soon as the law changed, Shukri gathered his employees

1 and again reminded them that Holy Land is not to be aligned
2 with any political organization. "Our motto is need not
3 creed."

4 And Shukri and Ghassan Elashi, who was chairman of the
5 board, were so concerned about this that they hired lawyers.
6 They even hired a former Congressman, John Bryant, and you
7 will hear him tell you that they hired him to find out, "What
8 should we do? We want to make sure we do everything legal."

9 He went to Washington. He went to the State Department.
10 He went to the FBI. He went to the Israeli embassy. He said,
11 "Just tell us. We want to make sure we stay on the right side
12 of the law." No one in this government or at the embassy
13 would ever tell Holy Land to stop working with anyone. No one
14 said stop providing charity to anyone or any organization.
15 And, in fact, that is because Holy Land wasn't breaking any
16 laws and they knew it. None of these zakat committees were on
17 any list.

18 And as you have heard, the United States government was
19 also giving money to them. It wasn't a mistake. Let's look
20 at the reality. The United States government, you will see
21 the documents, was giving money to the same zakat committees.
22 And you will hear particularly the United States Agency for
23 International Development, USAID, and you will hear about the
24 work that they did with the zakat committees.

25 You will hear from Mr. Ed Abington who was the former

1 consul general in Jerusalem from the United States. He was
2 our United States -- the United States representative in
3 Jerusalem, Israel from approximately '93 to '97. He visited
4 the zakat committees as a representative of the United States.
5 This is the same time period when Holy Land is providing
6 charity through the help of the zakat committees. And you
7 will hear from Mr. Abington that he never received any
8 reliable information that these zakat committees were
9 controlled by Hamas or part of Hamas. And you will learn that
10 none of the zakat committees or any of the charities listed on
11 this indictment was ever placed on this list. Even now seven
12 years later they are still -- not a single one is on that list
13 that she talked about.

14 You will also find out that Holy Land provided also for
15 fathers who were killed by Hamas or suspected of being spies
16 for Israel. It was need not creed. An important tenant of
17 the Muslim faith is that a child is never to be held
18 responsible for the sins of the father, and that was an
19 important tenant of this charity. Orphans are particularly
20 important in the Muslim faith, and you will hear more about
21 that. They provided for any orphan who was in need.

22 So you might ask yourself what exactly did Holy Land do,
23 and I want to very briefly tell you you are going to hear much
24 more about this, but you heard about the backpacks. These
25 kids couldn't go to school, many of them, because they didn't

1 have shoes and clothes to get there. Holy Land provided
2 backpacks for children and the backpacks had everything they
3 needed for an entire year--pencils, pads, et cetera, even
4 shoes and clothes. And I just want to show you one picture of
5 the kids with their backpacks. Here they are. And they are
6 outside. You can see the Holy Land logo, and they have got
7 their backpacks filled with everything they need so they can
8 actually get an education. This was very important to Holy
9 Land.

10 Holy Land provided orphans and families with monthly
11 stipends, during religious holidays provided them with food so
12 that they could celebrate their holidays.

13 Another thing that Holy Land did, Israel demolished homes
14 for various reasons. If a member of the family was suspected
15 of being a terrorist, Israel would demolish the homes
16 sometimes of the entire family and the extended family. If
17 people didn't have a permit to build, Israel would demolish
18 the homes. If Israel wanted the land for some other purpose,
19 they would demolish the homes. And then Holy Land would step
20 in. And I want to show you a picture. It is a picture of two
21 little boys going through what is left of their home to try to
22 find anything. Holy Land couldn't rebuild their homes, but
23 what it could do was help them. Holy Land and UNWRO both
24 provided tents for them until they could get housing. And the
25 Palestinian Authority would find apartments, but the

1 apartments were empty and these people had nothing, so Holy
2 Land would provide basic necessities, and I will show you
3 that. There you see the Holy Land representatives with a
4 mother and her children and the very basic things they need to
5 survive.

6 The Government can't say -- And you will hear much more
7 about the work that Holy Land did. This was reality. This is
8 not distraction. The Government can't say it didn't know
9 where Holy Land's money was going all those years. It knew
10 all the time from 1993 on that millions of dollars, the
11 millions of dollars you have heard about was being raised and
12 sent to Palestine and to some other countries. They knew
13 exactly what it was doing and where the money was going
14 because they tapped the phones of the Holy Land office and
15 most of -- some of the men, including Shukri, his home phone.
16 They listened to their phone calls, they listened, read their
17 faxes, they read their emails, they saw the bank transfers,
18 they knew where every bit of this money was going the whole
19 time.

20 It is -- Holy Land is an Islamic charity, and you are
21 going to learn more about what that means. Its founders,
22 including Shukri, are devout religious Muslim men, but it is
23 not a Hamas charity. You will see Holy Land's records and you
24 can judge for yourself when you see the records they kept.
25 You will hear from experts who will explain to you more about

1 zakat, and you will learn that this is indeed a charity, a
2 charity that was desperately needed, a charity that was
3 Shukri's life, it was his love, and it was his hope for the
4 children of Palestine, and you will learn that Holy Land did
5 not give one single dime to Hamas.

6 Ms. Duncan and I and Shukri are confident that at the end
7 of this case you will find Shukri Abu Baker not guilty. Thank
8 you very much for your attention.

9 THE COURT: Thank you. And we will do one more
10 before we take the lunch break.

11 Mr. Dratel?

12 MR. DRATEL: Thank you, Your Honor.

13 May it please the Court.

14 Thank you. Good afternoon. It is just barely afternoon.
15 Good afternoon, ladies and gentlemen. My name is Joshua
16 Dratel and I represent Mohammad El-Mezain. I hope you can all
17 see him. I can't move the monitor, but he stood up before and
18 told you he was not guilty.

19 The Government in its opening statement told you that you
20 will see a lot of documents, a fair amount of evidence, but
21 what this case will demonstrate to you is the difference
22 between the quality of evidence and just the quantity of
23 evidence. And I submit to you the evidence you will see will
24 not be of a quality where the Government will be able to prove
25 its case beyond a reasonable doubt.

1 The important thing the Government has to prove, what it
2 really has to prove particularly with respect to Mr. El-Mezain
3 beyond a reasonable doubt, it has to prove to each and every
4 one of you that Mr. El-Mezain knowingly or intentionally
5 conspired to provide material support to Hamas in a particular
6 form, that he knew or intended that the charitable aid that
7 the Holy Land Foundation provided to zakat committees in the
8 West Bank was going to organizations controlled by or
9 operating on behalf of Hamas.

10 Now, Mr. El-Mezain is charged in only one count, Count 1,
11 which is a conspiracy count to provide material support. And
12 for that count, and I will talk about it a little bit again
13 and you will hear about it throughout the case, the operative
14 date, the important date when that law became effective,
15 October 8th, 1997. So nothing that Mr. El-Mezain did before
16 then can be considered a crime, not that it would be, but the
17 Government has acknowledged that it can't even be considered.

18 About the zakat committees, the organizations where the
19 money went, they are all licensed, they all pre-existed Hamas,
20 they are licensed by not only the Palestinian Authority, by
21 Jordan, they operated when Israelis controlled the territory
22 up until 1994 when the Oslo Accords gave authority to the
23 Palestinian Authority. And the Government in its opening
24 talked about how these couldn't be designated. None of these
25 zakats have never been designated. As we sit here today they

1 are not designated.

2 And you will hear about the designation process. You
3 will hear that the Government designates thousands of
4 organizations. They designated certain other organizations
5 just like the zakat committees as being part of Hamas, but not
6 these where the money went.

7 You will also hear they could have been shut down at any
8 time, not only by the Palestinian Authority but by the
9 government of Israel.

10 There is only one witness who will come in and tell you
11 these zakat committees are affiliated with Hamas, in any way
12 or controlled by Hamas. That is a witness from Israel who
13 will testify anonymously before you who has a bias and an
14 interest in this outcome of this case who, I submit to you,
15 when you hear his testimony and the cross examination and
16 consider it in light of all the other testimony and evidence,
17 that you will see not objective, not reliable, certainly not
18 beyond a reasonable doubt, which is the standard.

19 The Government will try to give you a slice, a small
20 slice of a piece of evidence, but then when you look at the
21 entire pie, when you zoom out from the small focus that the
22 Government gives you, you will see an entirely different
23 perspective about this case.

24 I will give you an example. When they talk about the
25 Philadelphia meeting, Mr. El-Mezain wasn't even at the

1 Philadelphia meeting. I will give you another example. The
2 Government had a wiretap on Mr. El-Mezain's phone for a
3 decade, a decade, 1993 to 2003. You will hear some of those
4 conversations, but think about a decade's worth of your
5 telephone conversations and then look at the evidence you will
6 see from that and say, "Does this prove the offense that Mr.
7 El-Mezain is charged with?" I submit to you it will not.
8 None will be related to these charges. None will prove these
9 charges in a decade of conversations that are recorded.

10 I am not going to repeat what Ms. Hollander said about
11 Holy Land's purpose and its mission. I will just tell you
12 need not creed, and you will see that in the evidence.

13 Mr. El-Mezain was born in a town called Khan Yunus, which
14 is in the Gaza Strip. His parents still live there. He is
15 here in the United States with his wife and his eight
16 children. And you will hear Abu Ibrahim, as sometimes he is
17 referred to, Abu means father and Ibrahim is the first son,
18 the oldest son. That is a tradition in the Islamic world, the
19 father and then the name of the oldest son. So he is called
20 Abu Ibrahim. There is nothing unusual. It is a common
21 custom.

22 He came to the United States in 1983, received his degree
23 in business from the most prestigious university in Egypt,
24 Cairo's Al-Azhar. He first lived in fort Collins in Colorado
25 while studying for his Master's in economics, which he

1 received in 1985. And then in 1989 he and his family moved to
2 Paterson, New Jersey where he became an emam, and he worked at
3 the mosque there. He also raised money for an Islamic
4 Education Foundation. He also raised money for hundreds of
5 mosques and other institutions in the United States--mosques,
6 youth centers, schools. This was his skill and job.

7 From 1989 to 1999 he lived in Paterson, New Jersey and
8 worked for the Holy Land Foundation as the original chairman
9 of the board. In 1999 he moved to San Diego with his family
10 and he has been in San Diego ever since.

11 And he also changed jobs with the Holy Land Foundation,
12 resigned from chairman of the board and became the director of
13 endowment and he has always worked as a community leader, an
14 interfaith community leader in that character as well.

15 Now, the Government will try -- they talked about
16 distractions. Let me tell you about distractions. What you
17 will see in the evidence, which is documents from people you
18 don't even know who wrote them, handwritten, they will try to
19 tell you this has something to do with this case, with Mr.
20 El-Mezain, these Defendants.

21 Time frames. Keep in mind those time frames. It bears
22 repeating. Nothing about Hamas was illegal in the United
23 States, giving support to Hamas, material support, nothing was
24 illegal before 1995. With respect to Mr. El-Mezain, that one
25 count it is 1997. And 2001 are the last acts in this

1 indictment. So when you talk about events and evidence that
2 comes after that, ask yourself what is the relevance.

3 Just as an aside, the Government said that Hamas
4 succeeded because they now control the Gaza strip. It is
5 interesting that all the organizations to which Holy Land gave
6 money that are listed in this indictment are on the West Bank,
7 not controlled by Hamas, so ask yourself what is the relevance
8 of that. And you will see the evidence from I will show you
9 it is not.

10 Mr. El-Mezain is proud of his work in the Holy Land
11 because they provided need to people who really need it, aid
12 to the most needy, those ignored, those unable to help
13 themselves, those without a government to protect them. Now
14 he was not involved in the daily administrative aspects of
15 Holy Land. He was a fundraiser, and that was his skill.

16 What happened in 1995 and again in 1997, you will see
17 from the evidence, it is as if you are in a business and you
18 have -- let's say you have a contract with the government, you
19 are a government contractor, and there are some suppliers,
20 subcontractors that are disqualified, for whatever
21 reason--prior criminal activity, suspicions, all these things.
22 So the government gives you a list you can't use these people.
23 That is 1995 a list to the whole world the designation
24 process. These people, these organizations are considered
25 terrorists and you can't do business with them. That is what

1 the list is about, the designation list.

2 What happens in 1995 is essentially you get this list.

3 "Okay. I can't deal with A, B, or C, but I can still deal
4 with D, E, and F because they are not on the list." And
5 imagine if years after that the government comes back and
6 says, "You should have known that D, E, and F were bad even
7 though we didn't put them on the list." You had this
8 government contract and went and used these contractors that
9 were on the list because you thought it was okay, and years
10 later you find out no.

11 What happened in 1995 was that Holy Land knew that this
12 law had been passed. There is no question about that. Knew
13 Hamas was on the list. Mr. El-Mezain knew that. You will
14 hear the evidence. But what Holy Land did, just as a business
15 would do if you had been using one of those disqualified
16 suppliers and then got a list that said you can't use them
17 anymore, you would do what Holy Land did--adjust to the new
18 law and comply with it. Adjust to the new law and comply with
19 it.

20 And you can complain about it all you want. That is your
21 right as an American. You can say, "I don't agree with the
22 new list. I think the supplier is okay." You might call your
23 Congressman and say, "This supplier was good in the past. I
24 don't know why they are on the disqualified list." That is
25 your First Amendment right to petition for grievances to

1 associate, to speak your mind, to voice your opinions, which
2 you can do, and do business with that supplier. That is what
3 Holy Land did--didn't do business with people who were
4 designated and with Hamas; adjust and comply, just like you
5 would do in any highly regulated business, which Holy Land
6 knew the microscope was on them all times, from the media,
7 from organizations, from the government. You will see that
8 the last thing it would do is put itself in a position where
9 its mission could be compromised, its mission to provide aid
10 to needy Palestinians in the territories. That was its
11 mission, and anything that would jeopardize that was the last
12 straw. They would not do it. Instead adjust and comply.

13 Now, the Government told you about telephone
14 conversations that Mr. El-Mezain will be heard on. And again,
15 they have nothing to do with the charges, but you will hear
16 conversations. And you will hear how he reacts to news of
17 death on either side, Palestinian or Israeli. You will not
18 hear joy. You will not hear enthusiasm. And you will hear
19 other conversations which he does express joy, not about death
20 but about other things. You will be able to tell the
21 difference. You will be able to tell what kind of man he is
22 from that evidence. You will be able to tell his intent from
23 that.

24 But those ten years of taped conversations will not
25 provide anything of what the Government needs, and neither

1 will the videos. And the videos, when you see those videos
2 think to yourself "When was this said? What was the state of
3 the law when these statements were made? What exactly is Mr.
4 El-Mezain saying as opposed to what the Government
5 characterizes, and what is the context of the statements he is
6 making?" Again, it won't prove anything to you about these
7 charges.

8 But what these telephone conversations and all of the
9 evidence with respect to Mr. El-Mezain won't show you anything
10 about talking about giving money to Hamas; nothing suggesting
11 that he thought that giving money to zakat committees meant
12 giving it to Hamas, or any suggestion that the zakat
13 committees themselves were connected to Hamas in any way.

14 The Government also spoke about the Muslim Brotherhood,
15 and the evidence will show you that even from the Government's
16 own witnesses the Muslim Brotherhood is not Hamas. The Muslim
17 Brotherhood never been designated. And it is in the United
18 States, and still exists in other forms, public and permitted.

19 Mr. El-Mezain told them he was a member of the Muslim
20 Brotherhood. He told the Government that in an interview.
21 There is nothing hidden secret or nefarious about it.

22 Look at the evidence. Look at it hard. We ask you to
23 look carefully, pay attention. That is very important in this
24 case.

25 The Government also talked about relationships that Mr.

1 El-Mezain is related to someone other Defendants or related to
2 people who might be connected to Hamas. Keep in mind as we go
3 forward how much time the Government spends on that type of
4 evidence. Associations, who you are related to, it is not a
5 crime. The Government wants to make this a case about that
6 through the evidence that you will hear; not about Mr.
7 El-Mezain's intent and where the money actually went, because
8 that is what this case is about. It is not a substitute for
9 evidence. It is not a substitute for the proof beyond a
10 reasonable doubt.

11 The First Amendment is an important aspect of this case
12 because you will hear a lot of speech. In fact, it may
13 surprise you, but it is true, but it is not illegal to
14 actually be a member of Hamas. You could say, "I am a member
15 of Hamas." It is not a crime. What is a crime is to provide
16 material support for Hamas, and this case it is talking about
17 money going to Hamas. It is not a crime to say, "I agree with
18 Hamas. I am all for it." It is not a crime to go out on the
19 front steps of the courthouse and read the Hamas charter out
20 loud every day. That is all protected by the First Amendment.
21 That is not the crime here. The charges are material support
22 in the form of money to Hamas.

23 So you will see and hear a lot of speech from all sides
24 of the issue. Some of it will be angry. Some will be
25 frustrating. Much of it will be impassioned in one way or

1 another. But under the First Amendment, that speech cannot be
2 punished unless it is intended to or it is capable of inciting
3 imminent unlawful conduct, and none of that is the case here.

4 Think about being a terrorist organization. Think about
5 that and you will see the evidence and you will see none of
6 this what Holy Land did, so much of it, and Mr. El-Mezain in
7 particular, is what a terrorist organization would do.

8 The question is not who you talk to. It is not who you
9 know or are related to. It is not what you say. It is not
10 your political beliefs. It is about whether the Government
11 can prove to you beyond a reasonable doubt that Mr. El-Mezain
12 conspired, that he knew and intended that the money that Holy
13 Land gave to these zakat committees that went directly to
14 people was given to organizations with his knowledge and
15 intent that they were operating for the benefit of or
16 controlled by Hamas.

17 At the end of the case I will come back to you and ask to
18 return the verdict that the evidence will show you is the only
19 verdict--not guilty for Mr. El-Mezain. Thank you very much.

20 THE COURT: Thank you, Mr. Dratel.

21 Members of the jury, we will go ahead and recess for
22 lunch. I will ask you be back at 1:45. We will plan on
23 starting at 1:45.

24 (Whereupon, the jury left the courtroom.)

25 THE COURT: Anything from counsel before we recess?

1 See you back -- Yes, sir?

2 MR. DRATEL: How much time do we have left.

3 THE COURT: You used 15 minutes and Ms. Hollander
4 used 30, so you are right on where we were.

5 MS. SHAPIRO: We have one request to make, and that
6 is when the jury comes back or the end of opening, or whenever
7 it is appropriate, will you be instructing the jury that the
8 pictures Ms. Hollander showed are not in evidence?

9 THE COURT: Are they coming into evidence at some
10 point?

11 MS. SHAPIRO: We will be objecting to them coming
12 into evidence.

13 MS. HOLLANDER: The pictures I used were pictures
14 that came into evidence during the first trial, and they will
15 be coming back --

16 THE COURT: You will be offering?

17 MS. SHAPIRO: And we will be objecting.

18 MS. HOLLANDER: We won't be offering the map that we
19 used.

20 THE COURT: Right. Okay. Okay. Well, I don't
21 think -- So when the evidence starts, you are requesting an
22 instruction that says anything they saw during opening
23 statements --

24 MS. SHAPIRO: The same way opening statements are
25 not evidence, also anything they saw, that it is not evidence

1 at this stage.

2 THE COURT: Are you planning on offering the maps
3 that you showed?

4 MS. SHAPIRO: These maps I believe, yes.

5 THE COURT: Okay. Normally it is my practice to not
6 let lawyers use anything not in evidence so we don't have to
7 get into these instructions. Let me get back with you on
8 that.

9 MS. HOLLANDER: We are happy to move the map into
10 evidence, if that is what Your Honor wishes.

11 THE COURT: I don't think -- You are not objecting
12 to that?

13 MS. SHAPIRO: We are not objecting to the maps. We
14 are objecting to the photographs. We don't think those can
15 properly be authenticated at all.

16 THE COURT: All right. We will come back to this,
17 then. We will be in recess until 1:45.

18 (Lunch Recess.)

19 THE COURT: Ms. Cadeddu?

20 MS. CADEDU: Thank you, Your Honor.

21 Counsel, ladies and gentlemen of the jury, my name is
22 Marlo Cadeddu, and I represent Mufid Abdulquader sitting at
23 the end of the table.

24 Jury trials are long endeavors and they can sometimes be
25 confusing. Unfortunately, unlike on TV, things don't always

1 come in in the order you would like to see them so that you
2 can understand everything. Things come in out of order and
3 they are sometimes a little confusing, and for that we all
4 apologize. It is just how the rules work.

5 So my goal is today to give you, so you can think about
6 it, a little bit of a framework for how you are going to see
7 the evidence and how to categorize it. I am also going to
8 tell you a little bit about Mufid Abdulquader, the man I
9 represent; who he is, what the charges are, and what the
10 evidence is going to be.

11 During the course of this trial you are going to learn
12 about Mufid Abdulquader, the man I represent. You are going
13 to learn that he is an American citizen, that he is a civil
14 engineer who went to Oklahoma State University. He is a
15 licensed professional engineer. And he was born in the
16 Palestinian territories, what you are going to hear referred
17 to as the Palestinian territories. He, like every immigrant
18 that comes to the United States, was looking for a better life
19 for himself. That is how he ended up here.

20 The life he left behind, though, and the life so many
21 Palestinians live is a very, very difficult one. And you have
22 heard something about that and will continue to hear about
23 that as this case goes on.

24 Ms. Hollander told you a little bit about in 1948 the
25 state of Israel was created, and in that process almost a

1 million Palestinians were uprooted from their homes and became
2 refugees in the West Bank and the Gaza Strip, the Palestinian
3 territories.

4 After about 20 years in 1967, not quite 20 years, there
5 was another war that both the Prosecution and Ms. Hollander
6 told you about--the Six-Day War. Mufid's family is from
7 Silwad in the West Bank. So when the state of Israel was
8 originally created in 1948, his family wasn't expelled at that
9 time, but in the 1967 war his home was bombed and his family
10 fled to Kuwait. He was eight years old at the time.

11 You will learn that in this trial Mufid spent most of his
12 young life, grew up in Kuwait, but in 1980 he had the
13 opportunity to come and study in the United States. He came
14 to Oklahoma and started attending Oklahoma State University.

15 While he was at OSU he met his now wife Diane White, who
16 was studying math and industrial engineering. They have been
17 married for 23 years, and they have three daughters Zaneb,
18 Sarah, and Nadia.

19 Now, one of the things that I want to talk to you about
20 is how Mufid ended up here in Dallas and what that process
21 was. After graduating from Oklahoma State University Mufid
22 went to work for the Oklahoma Department of Transportation as
23 a civil engineer, and you are going to hear he worked there
24 for about nine years. At the end of nine years he was offered
25 a position here in the City of Dallas working as a civil

1 engineering on community development projects like the Bishop
2 Arts District in Oak Cliff.

3 You are going to learn Mufid in his free time is a
4 motivational speaker who has been invited to speak at area
5 high schools about education and being motivated in life. He
6 has also volunteered and continues to volunteer for lots and
7 lots of area organizations--mosques, schools, community
8 organizations. And one of the organizations that he
9 volunteered his time for was the Holy Land Foundation.

10 There is another very important fact that you are going
11 to hear about Mufid, and that is probably what most of the
12 evidence will be about. He is also a singer. He is a
13 traditional Palestinian folk singer, and he was and has been a
14 traditional Palestinian folk singer from the time he was a
15 little boy.

16 Shortly after Mufid moved to the United States, which was
17 in about 1980, as I told you, he joined a traditional
18 Palestinian music group called Al-Sakhra. Al-Sakhra means the
19 rock, and that was the name of the band for a number of years.
20 After a few years the band actually changed names, and so
21 another name you are going to hear in evidence is al-Najoon.
22 Those two names are names for the same band, and Mufid was a
23 member of that band for more than a decade.

24 The band had lots of different members over the course of
25 its existence, probably more than a dozen. And really a band

1 is kind of a misnomer. Really it was a singing group. Music
2 is played and a number of men sing traditional Palestinian
3 songs in Arabic.

4 The band was hired as a lot -- There are actually a lot
5 of Palestinian folk bands in the United States, as there are
6 Greek bands and Italian singing groups and Irish dancing
7 groups. And one of the things that the al-Najoon or Al-Sakhra
8 band was to do was to play weddings also cultural festivals
9 for graduation ceremonies, for all sorts of the kinds of
10 cultural festivals and cultural festivities that you can
11 imagine takes place in an ethnic community in the United
12 States.

13 One of the types of events that the band was also hired
14 to perform at was fundraisers, and some of those fundraisers
15 were Holy Land fundraisers, and some were fundraisers in which
16 Holy Land participated in and raised money. The Government in
17 this case is prosecuting Mufid as a volunteer and band member.

18 You are not going to hear any evidence he was an employee
19 of Holy Land, that he was on the board of Holy Land, that he
20 helped establish Holy Land, that he had anything to do with
21 where Holy Land decided to send the money, what the goals of
22 the organization were, or any of the issues about where the
23 money went in the end.

24 So what we need to do, because he is being prosecuted for
25 his work as a volunteer and a singer, we need to talk about

1 his volunteer work and his singing work, and I am going to
2 tell you a little bit about what those detailed in more detail
3 than I have already.

4 Mufid is charged in three counts with conspiracy to
5 provide material support to a designated terrorist
6 organization. And as I said before, the way that the
7 Government alleges he did that is being a Holy Land volunteer
8 and a singer in the band.

9 I want to talk about the singing first because it is
10 really the bulk of the evidence in this case. Most of the
11 evidence in this case against Mufid is going to be in the form
12 of videotapes of his singing and dramatic performances at
13 various functions. You are going to see a whole lot of those.
14 I think there are close to 10 of them. Those videotapes date
15 largely from the late 1980s and early 1990s.

16 In the videotapes what you will see is clips of actual
17 life in the Palestinian territories and various events that
18 were going on in some of them, and some of them you are going
19 to see singing -- In all of them you are going to see singing
20 and performing about the events that were going on in the
21 Palestinian territories at the time. They are basically a
22 snapshot about what the political and cultural happenings were
23 in the Palestinian territories at the times that these videos
24 were made.

25 So if we take ourselves back to the late 1980s and early

1 1990s, in the 1980s the Israeli occupation of the Palestinian
2 territory was in its second decade. What the occupation
3 means, as you have heard, is that Israel militarily occupied
4 the West Bank and the Gaza Strip, and also began engaging in
5 settlement activity, so invited Israeli Jewish settlers to
6 establish towns in what had been and what was Palestinian land
7 in the West Bank and Gaza.

8 During those settlement activities, the result of the
9 settlement activities was the towns were built up in the
10 middle of Palestinian land and the Palestinians were excluded
11 from their traditional land. They lost their fields. They
12 lost their crops, as you heard about. And the reason I bring
13 this up is because those are the subjects that is the -- Those
14 are to topics you are going to hear about in the songs. These
15 songs are entirely about the political happenings and what is
16 going on during that time in Palestinian history. It is
17 political speech, political songs, political skits.

18 There are also other things that are going on at the same
19 time you are going to hear about in the songs, and those
20 involve the arrest of Palestinians and the detention without
21 charge. The songs talk about being arrested, they talk about
22 "No matter how many people you arrest, no matter how many
23 people you kill, we are still going to resist because your
24 occupation is illegal." You are going to hear that
25 terminology and that theme throughout the songs that are going

1 to be put into evidence.

2 You are also going to hear skits, you are going to see
3 skits in which an actor, person, plays a particular character
4 and another person plays another character, and in one skit in
5 particular you are going to see a person play an Israeli
6 soldier and you are going to see Mr. Abdulqader playing an
7 Arab and someone who talks about Hamas, someone who identifies
8 with Hamas. Remember, these are going to be in the late
9 1980s, and I will talk about the significance of the date in a
10 second. But those characters debate. They have a political
11 debate. They argue, "It is my land."

12 "No, it is my land."

13 "No, I have a right to it. I have been here forever."

14 And it is a political dialogue that you see these
15 characters have, and in the end they actually battle and fight
16 symbolically for the land. So what is -- That is what is
17 going on. That is the context of the late 1980s. There is a
18 lot of seething resentment in the Palestinian territories as a
19 result of the Israeli occupation.

20 In 1987 there is an event that is really a catalyst. It
21 sparks something called the Intifada that you heard about. It
22 is not the only thing that -- It is not the reason for the
23 events. It is just the spark that lights up all this
24 resentment that people have been feeling. That event Ms.
25 Shapiro actually called a car accident. I would say car

1 accident is whitewashing the event quite significantly. In
2 fact, an Israeli tank manned by Israeli soldiers ran into a
3 group of Palestinians from one of the refugee camps and killed
4 them, and it was that incident that sparked the uprising that
5 we talk about as the Intifada. That Intifada is actually
6 called the first Intifada.

7 There was a second that happened a few years later, but
8 that Intifada is -- Intifada is called uprising, actually it
9 means uprising. And that Intifada happened at the end of the
10 1980s, as a set of mass demonstrations among Palestinians who
11 are living in the occupied territories. The first Intifada
12 had a real effect on what people around the world,
13 Palestinians around the world, were saying and doing about
14 what was going on in their native land. It really -- You will
15 see in the videos that there is a lot of discussion about the
16 Intifada, a lot of singing about it.

17 One of the things that happened in the Intifada is that
18 children teenagers threw rocks as a symbolic measure of
19 resistance against Israeli soldiers. Many people my age will
20 remember seeing on the TV children throwing rocks at the
21 Israeli soldiers. There is a theme about rocks and children
22 throwing rocks, and you will hear about all of that in the
23 music and in the skits.

24 There were people killed in the Intifada. Israel put
25 down this resistance, and there were a lot of people,

1 thousands of Palestinians who were killed. Those people are
2 known as shahid, which is the Arabic word for martyr. Martyr,
3 you will learn, is not a suicide bomber. You are going to
4 hear experts and a lot of testimony that a martyr to a
5 Palestinian is simply someone who died as a result of the
6 Israeli occupation.

7 Now, at the time of the first Intifada there was a lot of
8 sympathy for what people were going through in the
9 territories, and one of the things that happened -- There were
10 lots and lots of things. There was a lot of sort of desire
11 for political action and for support around the world for what
12 the people in the territories were going through, and one of
13 the things that happened at that time, and the Prosecution
14 talked about that, is that Hamas was established.

15 The Hamas movement began at about the same time as the
16 first Intifada. And initially among Palestinian people around
17 the world Hamas was seen as an answer to some of their
18 problems. The PLO--and you have heard reference to that; that
19 is the Palestinian Liberation Organization; that is Yasser
20 Arafat's organization--was at that time sort of the
21 spokesperson, the unofficial spokesperson for the Palestinian
22 community worldwide.

23 Well, Yasser Arafat at the PLO had been unable to achieve
24 anything. The situation had not changed in the Palestinian
25 territories for decades. There was a lot of corruption.

1 People viewed the PLO at that time, and even after that, as
2 being corrupt and lining their own pockets, so there was
3 really this desire for something new, something that could
4 make a difference to the people who were there. And so Hamas
5 was seen initially as that something new that could help the
6 people achieve their goals.

7 What you see, then, in the political talk and the
8 political songs, that you are going to see in the videos, is
9 that there is a lot of singing and discussion about Hamas.
10 People are really hopeful that Hamas is going to be the answer
11 to everything that they are going through, and so you will see
12 in the skits the people talk about Hamas and how excited they
13 are, and how maybe Hamas is going to be able to finally fight
14 Israel and get back some of the land for the Palestinians.

15 You are also in these videos going to see a whole lot of
16 anger and a whole lot of really hatred and resentment towards
17 the Israelis. Palestinians believe Israel is the reason for
18 the way they live in the Palestinian territories. You will
19 hear conversations, you will hear songs that talk about the
20 Jews and blaming all the troubles of the Palestinians on the
21 Jews. That language is not pretty. It is not politically
22 correct. It is sometimes ugly and hateful. But it is speech
23 and it is real feelings expressed by real people who really
24 care about the things that they are seeing happening in their
25 homeland.

1 What you are going to see -- Well, actually let me take a
2 step back. An important thing to remember, and I think some
3 of my co-counsel have touched on this, is the dates really
4 matter in this case. They are really important. The January
5 24th, 1995 date, the date that Hamas was designated a
6 terrorist organization is a critical date to remember.
7 Another critical date to remember is 2001, December, I believe
8 4th, 2001, when Holy Land Foundation stopped operating. What
9 we need to focus on, ladies and gentlemen, are the events that
10 took place between that period. When you hear something that
11 happens decades before or decades later, that is really just
12 not what we need to be focused on. And part of the reason for
13 that is that as we all know hindsight is 20/20, so when
14 someone shows you a videotape in this case and people are
15 talking about Hamas and how wonderful Hamas is, we are not
16 talking -- People are not doing that in 1995. They are doing
17 that in 1997, 1998, 1999, 2000, when they are just desperate
18 for an answer to the problems that are happening over in their
19 homeland.

20 So what happens in 1995 when Hamas gets designated?
21 Well, what you will see as you see the progression of evidence
22 in this case is that people stop talking about Hamas. The
23 Palestinians in this country, you are not going to see a whole
24 lot of videos where there is any discussion of Hamas.

25 Now, as Mr. Dratel told you, it is perfectly legal today

1 and forever to stand up and say, you know, "I love Hamas. I
2 want to read the Hamas charter on the courthouse steps,"
3 whatever you want to do. It is okay to talk about that. But
4 people, Palestinians in this country remember where they were
5 coming from. They were coming from a country where it was
6 illegal to fly their flag, where they could be detained for a
7 year without any charges, and they were afraid. So as a
8 result of being afraid, they stopped talking about Hamas
9 entirely, and you are not going to hear anymore about it after
10 1995. And that is not because they were -- That is not
11 because there is something wrong with talking about it. It is
12 simply because they want comply with the law.

13 You are going to hear the band that Mufid was a part of
14 was hired to perform around the country at all sorts of
15 events; not just Holy Land fundraisers, but it did include
16 some Holy Land fundraisers. Like any other band that gets
17 hired to perform gigs, there was a band manager who charged
18 expenses to whoever hired the band, who bought the tickets to
19 go to whatever venue was involved, who dispensed whatever fee
20 was paid to the band to perform, to the various members of the
21 band. And you are going to see evidence of that.

22 You are going to see airplane tickets, and you are going
23 to see the operation of the band, and you are going to hear
24 from an accountant who is actually the Holy Land Foundation
25 accountant talking about that.

1 I want to turn for a second to Mufid's volunteer work
2 with the Holy Land Foundation. The evidence is going to show
3 that -- By the way, there were -- I think I may have said
4 this, but there were more than a dozen members of the band for
5 the number of years it was in existence.

6 Turning to Mufid's volunteer work for Holy Land, the
7 evidence is going to show that he was one of many, many Holy
8 Land volunteers; tens of volunteers, 30 or 40 probably, it is
9 a little hard to say because there aren't always records of
10 people who volunteer their time and people volunteer their
11 time in many ways.

12 You are not going to see Mufid's name on a single
13 employee list because he was not an employee. You are not
14 going to see documents that he founded the organization. You
15 are not going to see any evidence that he had anything to do
16 with the board or with board membership or with any decisions.
17 You won't see his name on checks. You are not going to see
18 his name on any wire transfers or anything like that. He was
19 a volunteer who volunteered his time to raise money for the
20 Holy Land and other organizations.

21 You are going to hear from witnesses who are going to
22 explain to you about zakat. And you heard a little bit about
23 that already. Zakat is a name for a charity or tithing in the
24 Muslim faith. And you can give zakat -- I mean, it is very
25 similar to the Christian faith. You can give zakat by giving

1 money, actual money to needy people. You can also do it by
2 giving of your time and donating your time to an organization.
3 And that is actually what Mufid did. When he was volunteering
4 for Holy Land, he was giving zakat. He was doing his duty as
5 a Muslim, unlike -- I want to draw a distinction here. Unlike
6 when he performed with the band, though Mufid was not a paid
7 fundraiser. He was a volunteer.

8 His expenses were reimbursed. And you are going to hear
9 from the accountant that there are going to be records, he had
10 to turn in receipts, as every volunteer fundraiser did, he had
11 to collect the receipts for parking and airport and meals and
12 that sort of thing and then turn them in to be reimbursed.
13 And you are also going to see on one occasion a list of
14 people, including volunteers, who were given a check, a bonus
15 check on Eid, which is like our Christmas, when they give out
16 gifts, and that check is going to be a thank-you for all the
17 time and effort he had given to the Holy Land over the years.

18 To sum up, the evidence is going to show that Mufid was a
19 member of a band that had more than a dozen members and was
20 hired to perform at various events--weddings, graduations,
21 fundraisers, including the occasional Holy Land fundraiser.
22 You are going to see evidence that he was also a volunteer
23 fundraiser. He was one of many. He was not -- He didn't
24 raise anymore money than anybody else. He was a good
25 fundraiser, but you will see plenty of people who raised more

1 and plenty of people who raised less.

2 So you may actually be wondering why it is that when
3 there are a dozen band members and there are, you know, let's
4 say 30 or 40 volunteers, why he is sitting at the end of the
5 table over here, and you are going to hear about that. You
6 have in fact heard about why that is.

7 The answer is, ladies and gentlemen, this guy right here.
8 This picture is a photograph of specially designated terrorist
9 Khalid Mishal. Mr. Abdulqader has the unfortunate coincidence
10 of being Mr. Mishal's half brother, an accident of birth that
11 the Government seeks to exploit for its benefit.

12 At the beginning of my opening statement I told you that
13 the framework for thinking about this case is the First
14 Amendment. The First Amendment protects our right to free
15 speech, freedom of religion, assembly, and association, and
16 those are rights that all of us have that all -- That
17 particular amendment to the United States Constitution is one
18 that we all hold dear and we don't think about very much, but
19 we just all know we have those rights. It is something that
20 we feel deep down in our guts and that we don't really have to
21 think about a whole lot, but we do all recognize when those
22 rights are infringed. Every single piece of evidence you are
23 going to see in this case is going to fall into one of those
24 four protected categories--speech, religion, association, and
25 assembly.

1 The Government is going to play tapes of Mufid Abdulqader
2 saying a lot of stuff that Israel doesn't like. They are
3 going to try to use the things that he said about Israel in
4 order to turn his volunteering for the Holy Land into
5 something ugly instead of the religious duty it was. And they
6 are going to tell you to find him guilty because his brother
7 is Israel's Enemy No. 1.

8 I would like you to please listen to all the evidence
9 very, very carefully and recognize it for what it is, which is
10 an attempt to punish Mr. Abdulqader for exercising his First
11 Amendment rights, and for the fact that he is related to a bad
12 guy.

13 At the end of this case, after you have heard all the
14 evidence and you have considered everything, I know that you
15 will return the verdict that is the only one permitted under
16 the evidence in this case, and that is not guilty. Thank you.

17 THE COURT: Thank you, counsel.

18 And Mr. Westfall?

19 MR. WESTFALL: Your Honor, may I have just a moment
20 to get set up?

21 THE COURT: Sure, yes, sir.

22 MR. WESTFALL: Thank you, Your Honor. May it please
23 the Court.

24 Hello, ladies and gentlemen. I want you to do me a
25 favor. Look at your computer screens. I want to show you

1 something. See that right there? That is a picture of a
2 Palestinian child. That is the type of picture that was on
3 orphan applications that the Holy Land Foundation used to get
4 sponsors for these Palestinian children. That is also the
5 reason that Abdul Odeh got up and went to work every day.

6 You know, Abdul has been a citizen of the United States
7 for 20 years, but before that he was born in Silwad in the
8 Palestinian West Bank in the occupied territories. Before he
9 was one-year-old his family moved to Kuwait so his father
10 could get work. And Abdul came here in about 1982 to go to
11 college, and stayed, and has now been a citizen for 20 years.

12 After finishing college and doing a couple of other
13 things, limousine driver, odd jobs, he took a \$25,000 a year
14 job with the Holy Land Foundation in February of 1994, and
15 what he did was he manned the New Jersey office of the Holy
16 Land Foundation. He had no employees. He was the only
17 employee in the office.

18 He would go and tend to coin boxes, like you have at
19 7-Elevens for handicapped kids. You have seen the coin boxes.
20 They had those. He would go to mosques and collect donations
21 that they made for the Holy Land Foundation. And like Mufid,
22 I mean, he wasn't an incorporator of the Holy Land Foundation.
23 He wasn't one of the original guys. He was never on the
24 board. He didn't hire people. He didn't fire people. He
25 didn't make executive decisions. He wasn't in the Muslim

1 Brotherhood. He wasn't on the Palestine Committee. He didn't
2 give speeches. He was an employee of the Holy Land
3 Foundation. But the number one thing he was is that he was a
4 relief worker. And I would like to tell you a little bit
5 about the things that Abdul did while he was with the Holy
6 Land Foundation.

7 In 1996 Abdul went to the Canada Camp is what it is
8 called. There has been a couple of lawyers that have
9 mentioned the refugee camps to you. This is one of them.
10 When Israel was created, the Palestinians who lived there that
11 had to be moved away for the creation of the state of Israel,
12 they went to these refugee camps. And now, like for instance
13 this refugee camp in Rafah, which is right on the Egyptian
14 border, there are families in there that the children and the
15 grandchildren of the original Palestinians that were taken off
16 their land were put into these camps. And these people live
17 in just unimaginable poverty. There is cinder block homes
18 with corrugated steel roofs that they live in.

19 And what Abdul did was he got two trailer loads of food
20 down in Egypt, and with a couple of other people he drove
21 those up to this place. And, you know, the kids met them.
22 There is always kids, always kids. And they met them at the
23 front. And he went in to this place, that is a little U.N.
24 school, the United Nations school, school house, and that is
25 where they parked the trucks, and that is where they had

1 everybody line up to come get the stuff.

2 And you see this thing here, this is a sign-in sheet.
3 This is something they always did. You will see these where
4 all the names of all the people who were supposed to get the
5 aid, they would come in and sign for it, and if they couldn't
6 sign, which a lot of them can't, they would put a fingerprint
7 down there, you know. And you will see that. They had to
8 show their U.N. credentials and everything, and they got their
9 aid off the truck. They would get this little piece of paper.
10 And there is Abdul in Egypt administering this aid. This is
11 what he did.

12 You know, I want to take a break and tell you about the
13 pantry, because this was Abdul's pride and joy, and it was on
14 a picture a few pictures back and I forgot to mention it and I
15 need to. In New Jersey in his work place he set up a food
16 pantry for poor people in New Jersey.

17 Now, the observant Muslims have these food laws, just
18 like observant Jews do. You can't eat pork, and there are
19 other -- It is just like kosher, not just like kosher, but the
20 same idea. There is food laws that are based in the religion.
21 And if you are poor in New Jersey and Paterson, New Jersey at
22 that time and you are Muslim, there is just -- You just can't
23 do anything about it. You have to go to the food bank, do
24 what you can, do what you can.

25 But Abdul, with the backing of the Holy Land Foundation,

1 set this food bank up in New Jersey out of the Holy Land
2 Foundation office, and he did it with the Red Cross and with
3 the Passaic County Food Bank and with FEMA. A Congressman
4 came to the opening of it. It was a big deal. And that was
5 his baby. And at the end he was feeding about 250 families
6 out of that.

7 So let's go to Jordan. This is 1996. In 1997 Abdul goes
8 to Jordan and visits ten more of those refugee camps in the
9 space of ten days. Ten more of these U.N. refugee camps, and
10 the same deal. You can see here there is a lot of them that
11 have to do their thumbprints because they can't read or write,
12 and then they get their aid and he hands it out. In 1998 he
13 did this exact same thing again.

14 In 1999.

15 MR. JACKS: Your Honor, I am going to have to
16 object. This is not in the nature of an opening statement.
17 This is argument and things that are not in evidence, and I
18 would just object to the nature of this presentation. It is a
19 slide show.

20 THE COURT: We may be starting to get a bit more
21 into argument, counsel, than we should.

22 MR. WESTFALL: I expect the evidence to show these
23 things, like this photograph. I am going to show you all
24 something, and the evidence is going to show this very
25 clearly. Each one of these, you see down there in that corner

1 that little number? That means that these photographs are in
2 the possession of the Government, and you will learn that in
3 the evidence. The evidence will show that. And each of these
4 photographs that I have shown you up to this point is in the
5 possession of the Government. And this is what the evidence
6 is going to show, the work of Abdul Odeh.

7 I am asking you not to think like a terrorist. I am
8 asking you to think like a human being a man who is in the
9 charity business.

10 In Kosovo he took bread or he took a thousand tons of
11 wheat flour and a mobile bakery so that the refugees through
12 Slobodan Milosevic's campaign of ethnic cleansing could make
13 their own bread. He took two mobile clinics with him, little
14 hospitals on wheels. And the Holy Land Foundation, a USA
15 charity, did this.

16 This thing here was a booth that Odeh would sit in at
17 these conventions, and you are going to hear about these
18 conventions, the IAP conventions, the Maya conventions. What
19 the Holy Land Foundation did was raise money at these
20 conventions, and this is what Abdul Odeh did--he manned the
21 booth. And you can see behind the booth there are pictures,
22 and the evidence is going to show every bit of this, there are
23 pictures you can see, the ambulance picture there. These are
24 projects that the Holy Land Foundation did and these are the
25 specific things that Odeh would raise money for.

1 Some of the projects, like a wheelchair project in
2 Palestine, an electrical infrastructure project in Lebanon,
3 you know, you will hear -- And the Prosecutor mentioned the
4 food parcels. Well, the food parcels were a huge deal,
5 particularly around religious holidays. They would give the
6 needy these food parcels that would have staples in them like
7 olive oil and rice and stuff.

8 And, I mean, there are thousands of pictures, and I am
9 going to try to bring as many of them to you as I can showing
10 how they are put together and who they are given to. It is
11 all there.

12 These are the backpack projects. Here is another. You
13 see that little blue sign? That is a U.N. refugee camp. You
14 will hear about that. More backpacks.

15 And then finally this, you will learn from the evidence,
16 is an orphan application. The Holy Land Foundation you will
17 learn sponsored at any given time upwards of 2,000 or 3,000
18 orphans in Palestine at the rate -- If you signed up through
19 the Holy Land Foundation to sponsor an orphan, you would agree
20 to pay \$50 a month, and of that \$50, \$45 would reach the
21 orphan. And there are signature sheets to show that it
22 actually did. And in fact they are not even going to claim
23 that it happened any other way. The money went to the
24 children, period.

25 And each one of these orphan applications you will learn

1 has certain documents with it. You will see these documents
2 over and over. They are birth certificates, death
3 certificates of the father, because an orphan in Islam is --
4 Number one, an orphan holds an incredibly important place in
5 Islam because Mohammad was an orphan. But the way an orphan
6 is defined in Islam is a child that has no father. So, you
7 know, if the mother has eight children and the father has been
8 killed, those are eight orphans, even though their mother
9 still lives with them. That is the religious definition of an
10 orphan. But you will learn that these children, they are
11 needy, and it says so in all these documents.

12 And every single one of them -- This is a UN refugee
13 card. You see these a lot with the orphan application. But
14 every single one of them had a picture, and the picture of the
15 orphan was attached to the application on every one.

16 You know, they brought up -- Ms. Shapiro brought up this
17 beautiful operation phone call, you know, where Odeh was happy
18 about a bombing. Well, let me tell you kind of the rest of
19 the story.

20 MR. JACKS: Excuse me, Your Honor. We have got this
21 scrolling slide show that is going on while he is making this
22 argument or opening, and that is improper. These items are
23 not in evidence. Whatever he says about where they came from,
24 that is not evidence, and we would ask that this be
25 terminated.

1 THE COURT: Do you want to stop that?

2 MR. WESTFALL: I will, Your Honor. But I promise I
3 am going to seek admission of every one of these photographs
4 and quite a few more.

5 MR. JACKS: That is all well and good, Your Honor,
6 but until then these are not in evidence, and we object to
7 this display during what is supposed to be opening statements.

8 THE COURT: Okay. Overrule the objection as far as
9 the display. He is going to turn it off. Go ahead.

10 MR. WESTFALL: The beautiful operation, what she
11 didn't tell you was that January 22nd of 1995 there was this
12 double suicide bombing, and it killed 20 Israeli soldiers.
13 Okay? Twenty Israeli soldiers. And at the time Abdul Odeh
14 lives in New Jersey, and you can hear it in the wiretap he is
15 listening to the radio, he is listening to this on the radio
16 along with 200 million, God knows, other people. He is
17 listening to it on London radio. And so he knows that there
18 is 20 soldiers killed in this operation. Okay? And he calls
19 El-Mezain, this man that he looks up to an awful lot. He is
20 an emam.

21 Well, consider this. When somebody is arrested in the
22 occupied territories and is held without charges for months or
23 years, it is the Israeli military that does it. They are also
24 called the IDF, the Israeli soldiers. When somebody's home is
25 demolished to the ground to dust to make a bypass road, or to

1 make room for another settlement, or for whatever, it is the
2 Israeli military that does it. When a woman dies in
3 childbirth at a checkpoint because she can't get through to go
4 to the hospital, it is the Israeli military that didn't let
5 her through. The Israeli military is the face of the
6 occupation. So when Odeh hears on the radio that 20 soldiers
7 have died, 20 Israeli soldiers, you know, I am sorry that our
8 reaction was not appropriate for Ms. Shapiro. I can't wait
9 for you all to hear that call, because it shows how very human
10 this man is.

11 What this case is going to come down to is intent, and
12 everyone has said that in different ways. Okay? What were we
13 thinking, what was Odeh thinking when he did what he did, when
14 he said what he said. All right? And when they are going to
15 prove intent, they are going to try to prove intent, what they
16 are going to do is prosecute him with books that he had in his
17 office. They are going to seek to prosecute Abdul Odeh based
18 on a letter that somebody else wrote that was in his office.
19 They are going to ask you to convict Abdul Odeh based upon a
20 newspaper photograph that was cut out of a newspaper that says
21 Reuters on it that was found in his office, a picture of
22 Sheikh Yassin from 1990. These are things they are going to
23 use, that and the beautiful operation conversation like she
24 said. We are being prosecuted because of our reading
25 material.

1 But if you really want to see the intent of Abdul Odeh,
2 all you have to do is look at the pictures of these kids. In
3 order to get a conviction they have to somehow show that we
4 did humanitarian aid out of hatred, that humanitarian aid, the
5 feeding hungry children was an act of hatred done for the
6 purpose of eradicating Israel.

7 This is going to be a case where we see if such a thing
8 is even possible.

9 THE COURT: Thank you.

10 And Ms. Moreno?

11 MS. MORENO: May I have a moment, Your Honor?

12 THE COURT: Certainly.

13 MS. MORENO: Will you advise how much time I have
14 left?

15 THE COURT: I will give you the 25 minutes you had
16 asked for.

17 MS. MORENO: I might need a few more minutes, Your
18 Honor.

19 THE COURT: I think 25 will be sufficient.

20 MS. MORENO: Okay. Thank you very much.

21 May it please the Court. Good afternoon, ladies and
22 gentlemen.

23 The evidence is going to show you in this case that
24 Ghassan Elashi never supported terrorism, never supported
25 violence, has committed no crime, and never sent a nickel to

1 Hamas.

2 As one of the founders of the Holy Land Foundation,
3 Ghassan Elashi made a choice, he made a decision, he made a
4 commitment, a humanitarian mission to feed the poor and
5 provide for the homeless and destitute of Palestine and other
6 countries around the world. In the finest traditions of
7 American charitable service, the Holy Land Foundation and
8 Ghassan Elashi tried to meet the needs of some of the poorest
9 people in the world.

10 The mission was humanitarian. It was not political. And
11 his intent, you are going to be able to see, is going to be
12 amply demonstrated by the evidence. But politics is at play
13 in this case, ladies and gentlemen. Politics did not control
14 where the aid went, where the food went, and the money.

15 Now, the Prosecutor told you why this case is so
16 important to the United States' interest, but what the
17 evidence is really going to show you is Israel's influence in
18 the United States government policies in general and driving
19 this particular case in particular.

20 This case is not about terrorism. It is not about money
21 laundering. It is not about conspiracy. The evidence is
22 going to show you, you are going to see this, that Israel has
23 a dangerous influence over these policies, and it is at play
24 in this case in this courtroom.

25 And where are you going to see that evidence? You are

1 going to see it in the documents, which were largely supplied
2 by Israel, in the paid consultants who are in the employ of
3 Israel, the witnesses who come from the Israeli military, so
4 think about that when you are thinking about what is at play
5 in this case.

6 My name is Linda Moreno and, along with John Cline,
7 represent Mr. Ghassan Elashi. I hope you can see Mr. Elashi
8 there.

9 Let me tell you about my client Mr. Elashi. He was born
10 in Gaza in 1953, and he came to this country nearly 30 years
11 ago. He became an American citizen. He is married to an
12 American citizen, and all of his children are American
13 citizens.

14 And his story is like so many Palestinians of his
15 generation. His family lost their home in 1948. Mr. Elashi
16 lost his home in the Six-Day War, that the Government told you
17 about, in 1967. And you are going to learn why Ghassan Elashi
18 and Muslims around the world have a special place in their
19 hearts for Palestinians.

20 People who are doctors and teachers, lawyers, mothers,
21 fathers, business people around the world have a feeling of
22 hopelessness around the Palestinians. Those fortunate to have
23 escaped the Israeli occupation, which Ms. Hollander discussed,
24 and others, felt an obligation to support those who could not
25 escape the occupation and they did this through this zakat,

1 this tithing that we do as Christians.

2 The Holy Land Foundation was one of the preeminent
3 charities that accepted these zakat funds, these tithing
4 funds, for the benefit of the needy, and distributed the aid,
5 as you heard, according to need, not creed, not politics.

6 Now, the Government told you that Holy Land was created
7 to support Hamas. The evidence will show you this is
8 absolutely false. The evidence will show you something very
9 different. From 1967 to 1987, that 20-year span of time,
10 while the Palestinians were under a brutal military occupation
11 in the West Bank and Gaza, it took a deadly, deadly toll. In
12 response they organized into this largely non-violent
13 resistance known as the first Intifada that you heard about.

14 Now, you are going to hear that -- You heard something
15 about the children throwing stones. In fact, they were
16 referred to as the children of the stones. And you will see
17 photographs of children with stones throwing them at Israeli
18 armored tanks.

19 Many Palestinians died. The poverty deepened and the
20 Palestinian society deteriorated, you see, ladies and
21 gentlemen, because the occupation kills.

22 To respond to this crisis, to respond to this need, Holy
23 Land was born, not to support Hamas, but to support those
24 Palestinians at that desperate time in history.

25 Now, what did this need look like? And you have heard a

1 lot about it, and I am not going to go over and over it again.
2 But the Government asked you not to be distracted by the
3 charity. Remember that? The Government said, the Prosecutor
4 said think about the law. We want you to think about the law
5 because the law will direct you to intent. That is what you
6 must think about. And in this case the intent was the
7 charity.

8 The typical Palestinian child that the Holy Land
9 Foundation supported, that is where I want you to focus for a
10 minute. The Government's own expert, the first person you are
11 going to hear in this case, he will admit that during the
12 operation of the Holy Land Foundation, the operation of the
13 humanitarian aid, 70 percent of Palestinians lived under the
14 poverty line, lived on less than \$2 a day. The children were
15 born into refugee camps. So were their parents. So were
16 their grandparents. The refugee situation, it was
17 generational.

18 The cinder block homes that Mr. Westfall talked about,
19 you are going to see photographs of that. You are not going
20 to recognize these as homes from any American standard,
21 because these homes will in large part be one room, one room,
22 sometimes with holes in the ceiling. You will see photographs
23 of many, many people living in one room.

24 Sometimes there won't be a home because the homes have
25 been demolished, and you heard a little bit about that. You

1 see, the demolished homes project was a project that the Holy
2 Land supported, and the demolished homes you are going to
3 learn are -- it was a special form of collective punishment
4 that the Israelis had for families who are suspected of a
5 member of them being a terrorist.

6 Now, I say suspected because you are not going to hear
7 any evidence that there was some sort of legal determination
8 or court order. You are not going to hear anything like that.
9 But these families, because of the situation, will have lost
10 their homes. The homes were demolished.

11 Now, you are going to see that the entire family can be
12 punished for the acts of perhaps a family member, if indeed
13 that family member was a terrorist. This view is not
14 consistent with Muslim or Christian traditions, and we are
15 going to admit there is no question that money was raised in
16 this case to help some of those families who lost their homes.

17 And you saw a photograph with Ms. Hollander of the kind
18 of aid that these families would get--water and mattresses and
19 kerosene and food and the like. You will see photographs of
20 that. But what you will never see, you will see no evidence
21 whatsoever that there was any pre-existing agreement with
22 Ghassan Elashi or the Holy Land Foundation to extend charity
23 to anybody in exchange for any violent act or as a reward for
24 any violence; none whatsoever. And there will be no evidence,
25 none, that the aid that was given to these families somehow

1 gave them an incentive to do future violent acts; absolutely
2 no evidence.

3 You are going to learn there is no typical family
4 situation in the Palestinian homes of the refugee camps that
5 Holy Land served. Sometimes the fathers are missing. You
6 heard about detentions. Sometimes they have been killed.
7 Sometimes, if the children are lucky enough to have fathers in
8 the home, they need a permit to work because all Palestinians
9 need a permit to work, you will learn. This is the situation
10 that the Holy Land Foundation addressed.

11 Simply put, you will learn through the evidence in this
12 case that the Government of Israel controlled the agriculture,
13 the borders, the air, the water, travel, and nearly every
14 facet of Palestinian life. Exile and deprivation was the
15 condition of the daily life of the Palestinian, and it is to
16 this deprivation and to this need that the Holy Land
17 Foundation reached out to; not to the politics of Hamas.

18 The humanitarian work of Holy Land was a thoughtful and
19 reasonable response to the devastation wrought by now 40 years
20 of occupation. For the life of the charity for 12 years Holy
21 Land sent food, medicine--you are going to see photographs of
22 all of this--backpacks, wheelchairs, tuition money for
23 students, that is if the schools were open and not closed by
24 the Israeli military. You are going to learn that the Holy
25 Land Foundation helped train people in the refugee camps to

1 become tailors to learn how to sew so they could have
2 something, something of their own.

3 You are going to learn about chicken farms that the Holy
4 Land Foundation helped support these families so they could
5 have food on the table and that they could have a future.
6 Millions of dollars, you will see, went to buy food
7 packets--grain, flour, sugar, oil, the staples of life. That
8 is what Holy Land was about. That is what their intent was
9 about.

10 You are going to hear wiretaps in this case, phone calls.
11 Now, the Government never wiretapped Ghassan Elashi. They
12 never wiretapped Mr. Elashi. But he was picked up on phone
13 calls when he was talking to others who were being wiretapped.
14 And you are going to see some of those phone calls. You are
15 going to hear them. And we are grateful that you will be able
16 to, because remember, this is the government listening in to
17 someone's unguarded moments.

18 And by the way, the ten years of surveillance, nearly ten
19 years of wiretaps, 24 hours a day, 7 days a week, they are
20 going to bring you just a handful of phone calls for Mr.
21 Elashi, this material supporter of terrorism. That is all
22 they have got.

23 In none of those phone calls Mr. Elashi is never heard
24 supporting violence, never; never heard asking about any
25 Hamam-controlled zakat committees or about certain families of

1 suicide bombers or expressing a preference or anything like
2 that. He never said one committee should receive money over
3 another because of its relationship to any organization, let
4 alone a terrorist one.

5 You are going to hear two very important phone calls,
6 April 23rd and April 24th of 1996. These phone calls center
7 around the list, the law, the list that Ms. Shapiro told you
8 about. And you are going to hear Mr. Elashi and Mr. Abu Baker
9 discussing the implications of this new law and how this list
10 is going to affect their charity, and how the Holy Land needed
11 to wait for the list to determine who would be on it.

12 Let me just quote you a few things that you will see Mr.
13 Elashi said. He said, "Well, I'm going to abide by the law
14 because I won't be able to make a transfer. I know
15 that." You are going to hear him say, "What is important is
16 that the charitable work goes on. So yes, it is important to
17 us that violations do not take place." You will hear him say,
18 "The goal is that the work is in the open and the foundation
19 stays protected." That the work is in the open and that the
20 foundation stays protected; hardly the unguarded statements of
21 a supporter of terrorism of a Hamas operative or a money
22 launderer.

23 Mr. Elashi wanted the charitable work to be open and
24 transparent to ensure no violations took place so that the
25 needy would still be served.

1 Now, this law dealt with a list, and I am just going to
2 spend a couple of minutes on the list. The United States
3 government has the power to designate people and groups as
4 terrorists, and once you are designated you land on this list.
5 And no matter how a person or a group ends up being designated
6 a terrorist, the person or group goes on the list. And the
7 list is a master list. Okay? You are going to see it,
8 hundreds of pages long, thousands of names, thousands of
9 entities and people. And if you look at the list under H, you
10 are going to find Hamas listed. And you will find aliases.

11 And the list serves a very important function, because it
12 tells people in our country who they can't do business with.
13 And this list is public and it is on a website.

14 So let's say, for example, Apple in the U.S. is thinking
15 about selling ipods to a foreign country or a foreign company.
16 They can look on the list and see if that company is on the
17 list. If it is, they cannot do business with it. If the
18 foreign company is not on the list, however, Apple knows that
19 the company has not been designated as a terrorist. All it
20 has to do is check the list.

21 Now, over the years since Hamas' designation, other
22 organizations that the United States thinks are associated
23 with Hamas have been designated as terrorists. Abu Marzook,
24 Sheikh Yassin, their names are on the list. Various
25 organizations from around the world that the United States

1 thinks are part of the Hamas funding network, they are on the
2 list, and you are going to hear about them. Organizations
3 called Interpal and al-Aqsa. You will hear about these
4 organizations.

5 You will hear about a zakat committee called the al-Salah
6 Society and their director. They are on the list, but here is
7 a crucial point. Not a single one of the zakat committees to
8 which the Holy Land gave money, not a single one of the zakat
9 committees that you heard in the indictment, not a single one
10 of them has ever been designated a terrorist or placed on the
11 list, and not a single one of the officers or directors is on
12 that list. And the evidence will show you that Mr. Elashi was
13 looking to the list to tell him who he could deal with and who
14 he could not.

15 And Mr. Elashi says on the 23rd of April, with the FBI
16 listening and recording, "Well, I'm going to abide by the law
17 because I won't be able to make a transfer. I know
18 that." That's what he said. It could not be any clearer that
19 he believed that the list would tell him what Holy Land could
20 and could not do.

21 And if the Government put the zakat committees on the
22 list, Holy Land wouldn't give money to them. Ladies and
23 gentlemen, to this very day the zakat committees are not on
24 the list.

25 You are also going to find out that Mr. Elashi did

1 several things. He hired lawyers, a former Congressman that
2 Ms. Hollander talked about. You are going to hear he met with
3 the chief of the FBI here in Dallas to discuss the integrity
4 of the charity and its transparency. You are going to hear
5 when a leading newspaper accomplished some negative and false
6 rumors about Holy Land, Mr. Elashi hired counsel and sued the
7 newspaper this brought Holy Land even more into the public
8 spotlight, not away from the radar. This is not conduct you
9 would expect from a Hamas operative, a money launderer, or
10 supporter of terrorism.

11 Others have talked about the First Amendment and I am not
12 going to go there. It is very important, however, the
13 Government in this case has made a crime, made speech a crime,
14 it has made religion a crime, has made associations -- they
15 are going to want you to convict Mr. Elashi because of a
16 family relationship with someone. This is un-American and
17 should not be allowed.

18 Just a few words about the Government witnesses we expect
19 you will see. The first witness we believe is going to be a
20 Dr. Matthew Levitt. He is a paid consultant from Washington,
21 D.C., a so-called terrorism expert. You will hear he wrote a
22 book on Hamas, and you will hear that that book relies on, no
23 surprise, security sources from the Israeli government, that
24 he works for a think tank which has a definite pro-Israeli
25 agenda, and that he has spoken at AIPAC, which stands for the

1 American-Israeli Political Action Committee. I think the name
2 says it all.

3 You are going to hear from -- We anticipate you will hear
4 from a convicted felon who stole hundreds of thousands of
5 dollars from his employer. And then Mr. Dratel mentioned the
6 anonymous Israeli witness that you are going to hear from, and
7 what you will learn is that he is an Israeli employed by the
8 Israeli government, and he is their expert on these zakat
9 committees. And you will also learn that he never visited a
10 zakat committee and has read no books on zakat committees, and
11 it will be for you to decide the credibility of an anonymous
12 witness from the Israeli security agency.

13 I want to say a few words about the children issue. You
14 are going to hear a lot about the children. And Ms. Shapiro
15 said something about it. And the children have a very special
16 place for the Holy Land Foundation. And I anticipate you may
17 see some evidence of videos with Palestinian children.

18 Now, the Government is going to present this evidence and
19 these videos as examples of children who have been brainwashed
20 to hate Israel, brainwashed to hate Israel. The Government
21 will tell you that the blame for the way these children feel
22 and express themselves does not belong to Israel the occupier,
23 but to the Holy Land Foundation.

24 The evidence is going to clearly show you that their
25 mission was charitable. Holy Land's mission was not

1 political. It will be for you to decide, ladies and
2 gentlemen, at the end of the day, whether feeding children
3 brainwashes them or whether it is a brutal and violent
4 occupation that produces children robbed of their childhood or
5 any hope for the future.

6 Intent is a big issue in this case, and intent is what
7 you need to be focused on. I want to show you two last
8 pictures. One of them you have actually seen already. This
9 picture is a picture of a child in the rubble of family
10 members of a home that has been demolished. Cinder block.
11 See the cinder block? We are going to be moving this
12 photograph into evidence. This is the face of the occupation.

13 Now, this is the intent of the Holy Land Foundation. It
14 is not political. You are not going to hear anything about
15 any advocacy that the Holy Land did when it gave out aid.
16 Backpacks, children that look fed in their school uniforms.
17 This is the intent of the Holy Land Foundation. The charity
18 is important in this case. Don't be fooled. Don't let the
19 Government make you take the eye off the ball.

20 These children have a future under the Holy Land
21 Foundation and under the aid that Ghassan Elashi and the
22 others gave. They have a future. And they are more likely to
23 turn away, you will learn, from the tragic footsteps of the
24 suicide bomber. This is what the Holy Land Foundation was
25 about.

1 We are confident that after you look at all the evidence
2 in this case, you will do justice for Ghassan Elashi and for
3 the Holy Land Foundation and you will vote not guilty on all
4 the charges and acquit him. Thank you.

5 THE COURT: Thank you, Ms. Moreno.

6 MS. MORENO: Thank you, Your Honor.

7 THE COURT: Ready to call your first witness?

8 MR. JONAS: Yes, sir. If we can have a moment to
9 turn the lectern?

10 THE COURT: Sure.

11 MS. SHAPIRO: Your Honor, we just renew our request
12 with respect to --

13 THE COURT: What we discussed at the lunch break?

14 MS. SHAPIRO: Yes.

15 THE COURT: I will decline that at this time.

16 MR. JONAS: Your Honor, the United States calls
17 Matthew Levitt.

18 (Whereupon, the oath was administered by the Court.)

19 MATTHEW LEVITT,

20 Testified on direct examination by Mr. Jonas as follows:

21 Q. Good afternoon, Mr. Levitt.

22 A. Good afternoon.

23 Q. Could you tell us generally where you live?

24 A. Washington, D.C. area, Maryland.

25 Q. Sir, do you have a college degree?

1 A. I do.

2 Q. What is that degree in?

3 A. I have a Bachelor's of Science in political science from
4 Yeshiva University in New York.

5 Q. When did you receive that?

6 A. In 1992.

7 Q. Do you have a Master's degree?

8 A. I do.

9 Q. And what is that in?

10 A. A Master's of Law and Diplomacy, which is a fancy way to
11 say international relations from the Fletcher School of Law
12 and Diplomacy from Tufts University in Medford, Massachusetts.

13 Q. Outside Boston?

14 A. Yes.

15 Q. You say Master's of law. Are you a lawyer?

16 A. No.

17 Q. Glad to hear it. Do you have any other degrees beyond a
18 Master's degree?

19 A. I also have a Ph.D. in international relations also from
20 the Fletcher School at Tufts.

21 Q. When did you get that the degree?

22 A. 2005.

23 Q. Okay. What is your doctorate in?

24 A. Generally in international relations. The dissertation
25 specifically was on terrorism and negotiations in the

1 Israeli-Palestinian context.

2 Q. I should have asked you, what is a doctorate?

3 A. It is a Ph.D. It is the highest academic degree we get
4 in social sciences.

5 Q. Have you received any fellowships in getting your degree?

6 A. Several.

7 Q. What is a fellowship?

8 A. A fellowship is money and support, and in some cases
9 space, an office, to write and research one's dissertation.
10 In my case I received several small grants from the Fletcher
11 School and some foundations, the main one was from the program
12 Negotiation at Harvard Law School, which gave me a space to
13 sit for a year and funded my research in the West Bank, Gaza,
14 and Israel.

15 Q. You mentioned the word dissertation. What is a
16 dissertation?

17 A. A dissertation is the painfully long book-length study
18 one needs to do to finish a Ph.D.

19 Q. What was your dissertation specifically on?

20 A. It was on the impact of terrorist attacks on the
21 negotiation process in the context of the Israeli-Palestinian
22 arena focusing on terrorist attacks by both Palestinian
23 extremists and Jewish extremists.

24 Q. After you received your Master's degree, did you go to
25 work?

1 A. Yes. I went to work briefly at a think tank, the
2 Washington Institute for Near East Policy, where I am now
3 again, and then spent three years as a counterterrorism
4 analyst at the FBI.

5 Q. And while at the FBI what did you specifically do?

6 A. Specifically focused on analyzing the activities of
7 Middle Eastern terrorist groups present in the United States,
8 their fund-raising logistical support activities in
9 particular.

10 Q. Did you take any training courses while at the FBI?

11 A. I did.

12 Q. Such as?

13 A. Counterterrorism analysis, advanced counterterrorism
14 analysis, law enforcement and intelligence cooperation. Some
15 of these are courses provided by the FBI. Some are provided
16 by other U.S. agencies in the intelligence community.

17 Q. While at the FBI, did you have access to classified
18 material?

19 A. I did.

20 Q. Did you have a security clearance?

21 A. I did.

22 Q. Will any of your testimony in this court be based upon
23 any of the classified material you had access to?

24 A. No.

25 Q. How long were you at the FBI?

1 A. Just over three years.

2 Q. And after that where did you go?

3 A. After that I went back to the Washington Institute for
4 Near East Policy to found and direct a program on
5 counterterrorism specifically in the Middle East context,
6 which is what this think tank focuses on, and was teaching at
7 Johns Hopkins University, and was there for a little over four
8 years.

9 Q. Can you explain what a think tank is?

10 A. A think tank is kind of like being a professor without
11 having to spend most of one's time grading papers. Instead,
12 one is able to have most of one's time free for field research
13 and writing. Many people at think tanks like myself also
14 teach, but that is the add-on to what I do.

15 And so at the think tank I write academic journal
16 articles, books, policy pieces, which are by definition short,
17 policy-makers have a short attention span, op eds in the
18 newspapers, lecture at conferences, and travel doing my own
19 research.

20 Q. What is the general subject matter of the items that you
21 write?

22 A. Counterterrorism and intelligence issues within the focus
23 area of U.S. policy towards the Middle East, because that is
24 what our think tank is focused on.

25 Q. As part of your analysis and writings do you write about

1 Hamas?

2 A. I do.

3 Q. Have you -- Were you always at the Washington Institute
4 after you left the FBI?

5 A. No. After about four years at the Washington Institute,
6 I was recruited in 2005 to go to the Treasury Department to
7 serve as the deputy assistant secretary for intelligence and
8 analysis at the Treasury, and was there until January 2007.

9 Q. Are what does that mean? What were your responsibilities
10 at Treasury?

11 A. This was a relatively new office created at Treasury, an
12 intelligence office within the Treasury Department, so I was a
13 senior executive service manager within the department within
14 a branch called terrorism and financial intelligence, and then
15 I was also the deputy chief of Treasury's intelligence shop,
16 so it meant that I had a one foot in the intelligence
17 community under what is now the Director of National
18 Intelligence and one foot in the Treasury Department under the
19 bureaucracy of the Treasury Department.

20 Q. Why would the Treasury Department have an interest in
21 intelligence and terrorism?

22 A. The Treasury Department was tasked with focusing on the
23 financing of terrorism, and the financing of other illicit
24 threats--nuclear proliferation, drug kingpins, this type of
25 thing, and that is something that tends to be intelligence

1 driven because you are being asked to analyze and be
2 knowledgeable about what is at heart covert activity. So you
3 need some intelligence that will help you understand what
4 these entities are doing, even though they are trying to hide
5 it from you.

6 Q. When you say intelligence, can you explain what you mean?
7 Are you talking human intelligence, what is in the brain, or
8 are you using the term differently?

9 A. Intelligence meaning from sensitive sources and methods.
10 The CIA or other intelligence agencies will have spies. They
11 will sometimes tap telephones or email. So there can be all
12 kinds of means of information that will come into them through
13 what we call classified sources that are not public.

14 At the Treasury I always had my analysts also focus on
15 what we called open source information--the journals, the
16 articles, the books, because researchers, academics do very
17 good work that is also relevant and can be useful to their
18 work.

19 But in the Intelligence Branch you are using not only
20 what is publicly available but what is available through
21 clandestine collection.

22 Q. And what is the purpose of analyzing this information
23 that is gathered?

24 A. Well, it depends on what your task is. At the Treasury
25 Department our task was figuring out how terrorists were

1 raising, laundering, transferring, and then accessing their
2 funds, and making it more difficult for them to do so, either
3 by either designating them or providing information to other
4 agencies in the government to do other action. The FBI could
5 arrest them, the intelligence community could run an
6 intelligence operation, what have you. And this would apply
7 to the terrorism arena, WMD, weapons of mass destruction,
8 proliferation, et cetera.

9 Q. When you were in the Treasury did you focus on the
10 terrorism arena?

11 A. That was one of the areas I focused on, yes.

12 Q. And when you were at the FBI, was your role at the FBI
13 similar in that you were analyzing all this intelligence
14 material that came to you?

15 A. Yes. The difference was that at the FBI I was the kind
16 of desk analyst, and at the Treasury I was their boss.

17 Q. Again, at the Treasury Department did you have a security
18 clearance?

19 A. I did.

20 Q. And will any of your testimony in this courtroom be based
21 upon any classified information that you have seen?

22 A. No.

23 Q. With respect to terrorism, you spoke -- You have written
24 a lot about terrorism, I assume. Is that correct?

25 A. Yes.

1 Q. Okay. Is there a particular focus within the terrorism
2 community that you concentrate on in your writings?

3 A. Again, I focus on the Middle East as a region, and in
4 particular on logistical and financial support networks who
5 enable groups, terrorist groups to carry out not only the
6 attacks but also the other activities they need to carry out
7 their activities?

8 Q. And is Hamas one of those groups you focus on?

9 A. Yes.

10 Q. I am sorry. After Treasury -- how long were you at the
11 Treasury Department for?

12 A. Almost a year and a half.

13 Q. And where did you go after that?

14 A. I returned again to the Washington Institute for Near
15 East Policy where I am now director of a program on
16 counterterrorism and intelligence and a senior fellow there,
17 and again am teaching at Johns Hopkins University, and writing
18 and lecturing again.

19 Q. Could you explain your methods of research?

20 A. Like I used to tell my analysts, exploiting all source
21 information, meaning books, the work of other scholars,
22 journal articles, is the very first step, keeping on top of
23 information. But then the most important thing is conducting
24 primary field research--going out and interviewing people,
25 meeting people, spending time in the region. I travel to the

1 Middle East and to Europe in particular a lot. And then
2 collating this information, putting together a sense of
3 whatever it is you are studying and running it by other
4 experts and vetting or checking that information.

5 You know, primarily field research involves interviewing.
6 Because you interview someone doesn't mean that they are
7 necessarily telling you exactly the truth. Sometimes they are
8 telling you what they want you to believe. And so talking to
9 other experts and getting other inputs and opinions is very
10 important.

11 Q. You mentioned that you traveled to the Middle East.

12 A. Yes.

13 Q. How often do you go there?

14 A. Several times a year. It varies.

15 Q. Where in particular do you travel to in the Middle East?

16 A. I go to Israel and the West Bank a lot. I used to go to
17 Gaza as well, but haven't in several years. I go to other
18 countries in that part of the Middle East--Egypt, Jordan,
19 Turkey, and to the Gulf as well, the United Arab Emirates,
20 Qatar, Bahrain, Abu Dhabi, Dubai. I will be going next month
21 to the Emirates and Kuwait.

22 Q. When was the last time you were in Israel?

23 A. I was in Israel and the West Bank a week and a half ago.

24 Q. What type of people do you interview when you go over
25 there?

1 A. As many as I can fit in. Journalists, academics many,
2 many government officials, diplomats, police, intelligence
3 officials, people who are working with NGOs; anybody who might
4 have some insight into whatever the particular issue is that I
5 am researching.

6 Q. You mentioned a term NGO. What is an NGO?

7 A. Non-governmental organizations.

8 Q. Okay. When you interview government officials and
9 diplomats, are you interviewing just Israeli government
10 officials and diplomats or people from other governments as
11 well?

12 A. No. To interview just one side of any issue is useless,
13 so I do interview Israelis, of course, but I also interview
14 Palestinians. On this last trip, for example, I interviewed
15 Israelis, Palestinians, Americans in the region, diplomats,
16 European diplomats in the region, and that was just on a
17 three-day trip.

18 Q. When you have traveled over to that part of the world,
19 have you interviewed any members of Hamas?

20 A. I have.

21 Q. What circumstances?

22 A. People who are in jail.

23 Q. Do they freely talk to you?

24 A. Yes. They don't have to talk to me. I imagine that they
25 have got some time on their hands. And like I said, some are

1 more open than others. They are more open on some issues than
2 others.

3 One Hamas official that I interviewed, his case was still
4 pending, made it very clear that didn't want to talk about his
5 case at all, but was much more willing to talk about Hamas'
6 ideology.

7 MS. HOLLANDER: Objection, Your Honor. We are
8 getting into a hearsay and confrontation issue.

9 THE COURT: He is talking about general areas. He
10 may do that without getting into specifically what they told
11 you.

12 THE WITNESS: But on the same trip another
13 individual whose case had already been completed, in that case
14 he was convicted, was much more forthcoming on the details of
15 the attack that got him in jail for which he was convicted.

16 Q. (BY MR. JONAS) Do you speak Arabic?

17 A. No. A few words.

18 Q. Are these interviews conducted in English?

19 A. Yes.

20 Q. Did you ever have to speak to someone in another
21 language? Withdraw that question. Is every interview --
22 every person you speak to who doesn't speak English, how do
23 you conduct that interview?

24 A. Through translators or English. I would say the vast
25 majority of the interviews are in English, including with

1 Israelis, despite the fact that I do speak some Hebrew, and
2 with Palestinians or others in the Arab world.

3 Q. Are you familiar with the term primary documents?

4 A. I am.

5 Q. What is that?

6 A. A primary document unlike, say, you know, a newspaper
7 account, is an original document, a court document, for
8 example, or something that is submitted in the context of a
9 court case on a government document; an original document
10 written by, you know, a natural participant in an event.
11 Those are considered primary source documents.

12 Q. Well, do terrorist groups, and for purposes of our
13 conversation here let's talk about Hamas, do they issue
14 documents that you would study?

15 A. Certainly. They issue communiques, they issue charters,
16 that lay out their goals and agendas, they issue communiques
17 taking responsibility for attacks or laying out a political
18 position, and those are very useful to study.

19 Q. What is a communique?

20 A. A press release, really.

21 Q. And have you studied Hamas communiques --

22 A. I have.

23 Q. -- and other documents issued by Hamas?

24 How often has Hamas issued communiques?

25 A. It varies, but there have been many, many hundreds over

1 the past few years.

2 Q. Does Hamas have a website?

3 A. There are several Hamas websites.

4 Q. Have you studied those?

5 A. Yes.

6 Q. And what sort of information generally would you find in
7 a Hamas website?

8 A. Information about Hamas leaders, information about the
9 movement's ideology, its political position on specific
10 issues, its reaction to particular events, claims of
11 responsibility for attacks, things like that.

12 Q. How do you know in reviewing a website if it is an actual
13 Hamas website?

14 A. This is one of the things that is a good example of
15 something that you would need to get a consensus within kind
16 of the academic community about. There are certain Hamas
17 websites that are well-known Hamas websites and Hamas refers
18 to them themselves, and those are the ones that I would use.

19 Q. Do Hamas members or leaders give interviews?

20 A. They do.

21 Q. And what is the purpose of doing that?

22 A. Any organization that is involved in political activity,
23 whether or not it is also involved in terrorist activity, is
24 seeking to get out its message, and to do that you need to
25 communicate with the larger public. And so Hamas is trying to

1 articulate its position on issues, whether it is on an attack
2 or a political issue or an event, and Hamas very frequently
3 will issue communiques or will have its leaders interviewed to
4 articulate its position, how was it founded, what are its
5 goals, what is its reaction to a particular historical or
6 recent event, why does it do X and not Y; get its position out
7 there on a variety of issues.

8 Q. Without going into the details, is there a particular
9 interview that is well-known from a Hamas leader?

10 A. There are several, in particular two --Khalid Mishal, who
11 is the current leader of Hamas, one from Ghassan Charbel, a
12 journalist in Al-Hayat in the Arab language daily, though it
13 also has an English website and is available in English. It
14 is a seven- or eight-part interview. There is a more recent
15 one in the Journal of Palestine Studies of Khalid Mishal, a
16 two-part issue by Muin Rabbani, an analyst based in Amman,
17 Jordan.

18 Q. If possible, can you spell some of those names?

19 A. With difficulty. Khalid Mishal, K-H-A-L-I-D
20 M-I-S-H-A-L. Ghassan Charbel, G-H-A-S-S-A-N C-H-A-R-B-E-L.
21 Muin Rabbani, M-U-I-N R-A-B-B-A-N-I. They are all
22 transliterations, obviously, from the Arabic, so there will be
23 some --

24 Q. You mentioned as part of your research talking to other
25 scholars and reading other material. Are there books out

1 there on Hamas that you reviewed that you found to be
2 particularly helpful?

3 A. Yes.

4 Q. Can you tell us some of those books?

5 A. Azam Tamimi is based in Britain and has written a book on
6 Hamas; two Israeli scholars Auraham Sela, and I forget his
7 first name, Mishal, wrote a book as well published by Columbia
8 University Press. Ziad Abu-Amr, a Palestinian scholar and
9 politician has also written a book on Hamas.

10 In the past year there have been several other books on
11 Hamas. Zaki Chehab, a Palestinian journalist, one by I think
12 it is a Danish Academic University in Wales in the U.K. wrote
13 a book on Hamas, and there is another one by a Belgian that is
14 several years old, and all in different ways some are better
15 than others, but are all useful for comparison purposes.

16 Q. With all this information that you gather, how do you
17 determine what is useful and what is not?

18 A. Again, it is a process of meeting with other scholars,
19 comparing and contrasting, putting together as much
20 information as possible, creating a sense of what is in the
21 realm of the known, the likely, and the possible, and anything
22 that is out of the realm of the known, which is most, because
23 this is a social science not a natural science, not physics,
24 is meeting with others and bouncing ideas off others, and that
25 would be other academics, experts in government, multiple

1 governments, in this case Europeans, Americans, Israelis,
2 Palestinians, and comparing what you find in interviews
3 against what you find in primary source documents, et cetera.

4 Q. Are you familiar with the terrorist designation lists
5 that come out by the United States government?

6 A. I am.

7 Q. You mentioned that you taught at John Hopkins?

8 A. Yes.

9 Q. What is that course in?

10 A. Several courses. It is the School of Advanced
11 International Studies or SAIS. I taught a course called
12 "Contemporary Terrorism and the American Response," and then
13 after I left Treasury decided to teach something that was more
14 related to the expertise I developed there and now teach a
15 course on combating the financing of transnational threats.

16 Q. Where is John Hopkins, by the way?

17 A. The main campus is in Baltimore, Maryland. The School of
18 Advanced International Studies is in Washington, D.C.

19 Q. Is that graduate level or undergraduate that you teach?

20 A. It is only graduate.

21 Q. Have you consulted with governments?

22 A. I have.

23 Q. What governments?

24 A. I have consulted for the U.S. government, lectured for
25 the U.S. government, speak at government conferences, testify

1 in this case. As well as for other governments, I have
2 testified in two cases now for the government of Denmark,
3 consulted for the government of Sweden, consulted for the
4 government of Canada. That is representative. I don't know
5 if that is all.

6 Q. Are you familiar with an individual named General Jones?

7 A. Yes.

8 Q. And how are you familiar with him?

9 A. General Jones is currently the special envoy from Middle
10 East Regional Security at the State Department, the position
11 that he was appointed to by the Secretary of State and the
12 President, for the purpose of trying to move Israelis and
13 Palestinians closer to peace and trying to secure, if not an
14 actual peace, then a better environment on the ground that
15 lends itself to a peaceful solution.

16 He has put together a team of government officials and
17 outside experts, and I have served as an advisor to his
18 mission on counterterrorism issues. This is not a
19 counterterrorism mission. It is a peace process mission. And
20 I have been very proud to serve on it.

21 I am not doing it currently. I haven't actually signed
22 out of what is called this temporary government position. The
23 Secretary has asked him to stay, on and he is continuing with
24 a skeletal staff and he has asked the rest of us to be on an
25 on-call basis.

1 Q. You say the Secretary asked him to stay on. What
2 Secretary?

3 A. The Secretary of State.

4 THE COURT: Let's go ahead and take the afternoon
5 recess. Be back at quarter till 4:00 by that clock up there
6 on the wall.

7 (Whereupon, the jury left the courtroom.)

8 THE COURT: We will be in recess.

9 (Brief Recess.)

10 THE COURT: Mr. Jonas?

11 Q. (BY MR. JONAS) Doctor Levitt, when we -- Before the
12 break we were talking about your work with General Jones and
13 the Mid East process, I guess?

14 A. Yes.

15 Q. Besides working for the U.S. government in that aspect,
16 have you ever testified before Congress?

17 A. Several times, yes.

18 Q. What were the subject matters of your testimony?

19 A. Specific Middle Eastern terrorist groups, terror
20 financing generally, Iran, sanctions on Iran, this type of
21 thing.

22 Q. When you say specific Middle East terrorist groups, would
23 Hamas be one of those groups?

24 A. Yes.

25 Q. Are you affiliated with any organization?

1 A. Yes.

2 Q. What organizations?

3 A. Aside from the Washington Institute for Near East Policy
4 and Johns Hopkins University, I am a term member at the
5 Council on Foreign Relations, an adjunct fellow at the
6 Combating Terrorism Center at the U.S. Military Academy at
7 West Point, I sit on the international advisory boards for
8 Counterterrorism Institute in Israel and another one in
9 Singapore. I think that is it, or close enough.

10 Q. Can you do me a favor and pull the microphone a little
11 closer to you, if that is possible?

12 A. Is that better?

13 Q. Yes.

14 Have you received any awards.

15 A. Yes.

16 Q. What type of awards?

17 A. I have received awards for government service for the
18 work I have done from groups as diverse as CNN to the U.S.
19 Treasury Department and the FBI.

20 Q. You mentioned your writings, you write at the Washington
21 Institute. Have you authored any books?

22 A. I have.

23 Q. What books have you written?

24 A. I wrote a book for the Washington Institute called
25 Targeting Terror, about Middle Eastern Terrorist Groups other

1 than the ones we have been looking at since 9/11. I have
2 written a book on Hamas published by Yale University called
3 Hamas: Politics, charity, and Terrorism in the Service of
4 Jihad. And now I have written a book called Negotiating Under
5 Fire. Preserving Peace Talks in the Face of Terror Attacks.

6 Q. Negotiating Under Fire, when did that come out?

7 A. About a week ago.

8 Q. And specifically you are talking about peace -- What is
9 the subject matter?

10 A. It is a book version of my Ph.D. dissertation that we
11 discussed earlier. It is about, from a conflict resolution
12 perspective if we assume, as I argue we should, that spoilers,
13 in this case whether they are Palestinian extremists or
14 Israeli extremists, are trying to torpedo a peaceful
15 negotiated settlement, then what can be done to buttress, to
16 protect the peace process from the outset in anticipation of
17 those types of attacks.

18 Q. Are you familiar with the term peer review?

19 A. I am.

20 Q. What does that mean.

21 A. Peer review means you have other academics, your peers,
22 review your work before publication. In my case, I write
23 things that are peer reviewed and I write some things that are
24 not peer reviewed. Some of the most prestigious publications
25 out there, like foreign affairs, are not peer reviewed. But

1 my books have been peer reviewed by persons unknown to me,
2 academics who gave criticism and praise both, and I would like
3 to think made the books better for their constructive
4 criticism.

5 I have written chapters in books published by other
6 university presses that have been peer reviewed, and I have
7 written articles in academic journals such as "Studies in
8 Conflict and Terrorism." I have an article coming out in the
9 Journal of International Affairs at Columbia that are all peer
10 reviewed.

11 Q. The methods of research you have talked about, all the
12 primary research and the primary interviews and the secondary
13 research that you do, is that the accepted standard of
14 research in your field?

15 A. It is. It is been referred to as the gold standard.

16 Q. Now, you sound like you are a busy person. Are you
17 getting compensated for your time here?

18 A. I am.

19 Q. And how much are you getting compensated?

20 A. \$200 an hour.

21 Q. Is that the going rate?

22 A. No.

23 Q. Is that above the going rate?

24 A. It is below the going rate.

25 Q. Your Honor, at this time I would offer Doctor Levitt as

1 an expert on the terrorist group Hamas.

2 THE COURT: Counsel, any objection?

3 MR. CLINE: We just renew our previous pleadings on
4 the subject that I think you have argued to you.

5 THE COURT: Doctor Levitt is accepted as an expert
6 on that issue.

7 MR. JONAS: Thank you, sir.

8 Q. (BY MR. JONAS) Doctor Levitt, what is Hamas?

9 A. Hamas is a Palestinian group, a movement. The name is an
10 acronym for Harakat al Muqawamah al Islamiyya, which means
11 Islamic Resistance Movement. And it is a movement that is
12 engaged in social, political, and military and terrorist
13 activity, with the aim of securing a Palestinian state in all
14 of historic Palestine, meaning what is today the State of
15 Israel the West Bank, and Gaza; and not just any state, but an
16 Islamic state, not a secular state.

17 Q. You said many things there, and we are going to break
18 them down. When was Hamas formed?

19 A. It was officially formed in December 1987, but those same
20 leaders who formed Hamas, in some of the interviews I
21 mentioned earlier, for example, have been very open about the
22 fact that the group existed under other names long before
23 then; certainly through the early 1980s.

24 Q. Where was it formed?

25 A. Among the people who founded it were people as far afield

1 as Kuwait in the Arabian Gulf, but the movement was founded in
2 the West Bank and Gaza, primarily, in the first instance, in
3 Gaza.

4 MR. JONAS: Your Honor, if I may show some maps to
5 Doctor Levitt?

6 THE COURT: Yes.

7 Q. (BY MR. JONAS) Doctor Levitt, you are familiar with the
8 geographic region of this part of the world?

9 A. I am.

10 Q. I want to show you a series of maps starting, with what
11 has been marked as Map No. 4. Do you recognize this map?

12 A. I do.

13 Q. And what is this?

14 A. It is a map of the world.

15 MR. JONAS: Your Honor, I would offer into evidence
16 Map 4.

17 THE COURT: Counsel?

18 MR. CLINE: No objection.

19 THE COURT: Admitted.

20 Q. (BY MR. JONAS) Doctor Levitt, I will hold it up so you
21 can stay where you are. Just point out on this large map of
22 the world where Israel, Gaza, the West Bank is located.

23 A. It is very hard to see them because they are all very
24 small, but this little strip along the edge of the
25 Mediterranean northeast of Egypt is Israel, the West Bank, and

1 Gaza.

2 Q. Do you recognize this region?

3 A. I do.

4 THE COURT: Give me the map number again, counsel.

5 MR. JONAS: The current one is Map 3.

6 Q. (BY MR. JONAS) And what is this region?

7 A. This is a map of the Middle East.

8 MR. JONAS: Your Honor, I would offer into evidence
9 Map 3.

10 MR. CLINE: No objection.

11 THE COURT: Admitted.

12 Q. (BY MR. JONAS) Again I will hold this up here. And then
13 if you can point out Israel and Gaza and the West Bank.

14 A. It is easier to see here. Israel is this pinkish part in
15 the middle. And what is white, the piece over here and this
16 very small piece over here, this is the West Bank, and this is
17 the Gaza Strip.

18 Q. Okay. Could you describe or tell us the countries
19 surrounding Israel?

20 A. You have Egypt here, and the Sinai Peninsula which is
21 part of Egypt, now Jordan, Syria, and north is Lebanon.

22 Q. I will show you what is Map 5. What is this?

23 A. This is a close-up map of Israel, West Bank, Gaza Strip,
24 and some of the surrounding countries; all of them, but just
25 little pieces of them.

1 MR. JONAS: Your Honor, I offer into evidence Map 5.

2 MR. CLINE: No objection.

3 THE COURT: Admitted.

4 Q. (BY MR. JONAS) Now we have gotten really close, would
5 you say, Doctor Levitt, in terms of the size of Israel?

6 A. You have. They suddenly look bigger. What you have,
7 this white in the middle is Israel, this is the Gaza Strip,
8 this is the West Bank, here you have Egypt, Jordan, the Golan
9 Heights and Syria are up here, and Lebanon is up here.

10 Q. And could you just point out on the map where you said
11 Hamas was formed?

12 A. Here in the Gaza strip and in the West Bank. There was
13 input from leaders outside those regions as well, but this was
14 its primary location when it was formed.

15 Q. Do those areas the West Bank and Gaza commonly go by
16 another name?

17 A. The territories are the Palestinian Territories or the
18 Occupied Territories.

19 Q. Why are they referred to as the Occupied Territories?

20 A. After the 1967 war between Israel and its neighbors,
21 after Israel was attacked, Israel conquered a significant
22 amount of territory, including all of the Sinai, which has
23 since been returned to Egypt, the Gaza Strip, the West Bank
24 including all of Jerusalem, and the Golan Heights from Syria.

25 MR. JONAS: Your Honor, again if I can approach

1 Doctor Levitt so he can point out those areas?

2 THE COURT: Yes.

3 Q. (BY MR. JONAS) You mentioned two additional areas, the
4 Sinai and Golan Heights. If you will point those out, please.

5 A. This what is marked here as Egypt is the Sinai. The Suez
6 is somewhere over here breaking it off from the rest of Egypt.
7 And here is the Golan Heights which Israel captured from
8 Syria.

9 Q. This occurred in 1967, you said?

10 A. Yes.

11 Q. What was the common name for this war?

12 A. The Six-Day War.

13 Q. What happened to spark the war?

14 A. Israel was invaded by its neighbors, and then
15 preemptively -- Not preemptively. It was invaded by its
16 neighbors, struck back, and within six days conquered a
17 significant amount of territory.

18 Q. You say its neighbors. You have identified several
19 countries surrounding it. Which countries in particular are
20 you referring to?

21 A. Egypt, Jordan, and Syria, though there were brigades from
22 other countries like Iraq as well.

23 Q. When Israel captured these pieces of land, the Gaza, West
24 Bank, Sinai, Golan Heights, who did they belong to prior to
25 the Six-Day War?

1 A. The countries that they are closest to. The Golan
2 Heights is part of Syria. The West Bank was being
3 administered by Jordan. It was not independent. And the Gaza
4 Strip was under Egyptian control, also not independent.

5 Q. All right. Does Israel still occupy the West Bank and
6 Gaza Strip today?

7 A. Israel is not in the Gaza Strip at all. Israel withdrew
8 all civilians or settlers and all military from the Gaza Strip
9 in 2005. It is still occupying the West Bank where there are
10 pockets of Palestinian control, primarily in the cities. As
11 part of the peace process, the West Bank was split up into
12 three different types of area, Area A, B, and C. That still
13 applies, and so there are some areas that are under more
14 Palestinian control. But the entire of the West Bank is still
15 under Israeli military control, and, therefore, occupation.

16 Q. Prior to the 1967 War, when did Israel come into
17 existence?

18 A. In 1948.

19 Q. And what happened to cause it to come into existence?

20 A. There was a vote at the United Nations, and the United
21 Nations voted to create a homeland for the Jewish people and a
22 homeland for the Palestinian people. And they decided not to
23 make one homeland, but to split this disputed territory
24 between the two. And Israel accepted that partition and
25 declared the State of Israel. The Palestinian leadership at

1 the time and the Arab states all rejected it and went to war
2 with the new State of Israel leading to the war of 1948, which
3 the Israelis describe as and call their War of Independence,
4 and the Palestinians describe as the Nakba, or the
5 catastrophe, because it led to not only the creation of Israel
6 but did not lead to a Palestinian state. As we said earlier
7 Gaza was under the control of Egypt; west Bank under the
8 control of Jordan.

9 Q. Turning back to Hamas, what are the goals of Hamas?

10 A. Hamas seeks to establish a Palestinian Islamic religious
11 state in all of the area that we have described as Israel, the
12 West Bank, and Gaza.

13 MR. JONAS: Your Honor, if I can approach Doctor
14 Levitt one more time?

15 THE COURT: Yes, sir.

16 MR. JONAS: It may not be one more time.

17 Q. (BY MR. JONAS) Can you on this map again, which is Map 5
18 for the record, show us what areas you are talking about that
19 Hamas wants to establish as an Islamic state.

20 A. All of this white which is Israel, the Gaza Strip, and
21 the West Bank, so this entire area which is the original
22 disputed area.

23 Q. If Hamas was successful in its goals, what happens to the
24 State of Israel?

25 A. It would cease to be.

1 Q. Are you familiar with something called the two-state
2 solution?

3 A. I am.

4 Q. What is that?

5 A. The two-state solution is much like it sounds--the idea
6 of resolving this conflict by establishing two states, as
7 originally intended by the United Nations, living side by side
8 in peace with each other and their, neighbors a State of
9 Israel and a state of Palestine. The two-state solution is
10 primarily, although there is lots to be negotiated, lots of
11 final points, the exact borders, the status of the holy sites
12 in Jerusalem, the right of Palestinian refugees who fled
13 Israel, the West Bank, or Gaza in the various wars to return,
14 all that has to be negotiated, but the Palestinian state would
15 be in general terms all of the West Bank and all of the Gaza
16 Strip.

17 Q. What is Hamas' position on the two-state solution?

18 A. Hamas is expressly against the two-state solution. It
19 again wants to have a single Palestinian state in all of that
20 land; and not just any state, not a secular state, but an
21 Islamist state, and has been very explicit about that. In
22 part it is because Hamas puts this into a radical religious
23 context where it sees all of this territory, all of these
24 lands, as an Islamic endowment, a gift to the Muslim people
25 that must be ruled by Muslims.

1 Q. You are using the term Islamist state. What do you mean
2 by that?

3 A. A state that is ruled by Islamic law or sharia to one
4 extent or another.

5 Q. What is Islamic law?

6 A. Religious law.

7 Q. Can you give an example of -- Well, withdrawn. Are there
8 countries out there today that are run by Islamic law?

9 A. Again, to one extent or another, and they are different,
10 but the Sudan or Saudi Arabia or Iran are all states that to
11 one extent or another are run by Islamic law.

12 Q. Are you familiar with the term secular?

13 A. I am.

14 Q. And what does that term mean?

15 A. Secular means not religious; not necessarily
16 anti-religious, but not religious in the sense, for example,
17 that the United States is a secular country. We are not
18 governed by any particular religious law, but you are free to
19 practice whatever your religion in this country.

20 Q. Would you describe Hamas as secular?

21 A. No.

22 Q. Are there other Palestinian groups out there that have
23 similar goals of Hamas that are secular?

24 A. Yes, to varying degrees. The goals are not all exactly
25 the same, but there are groups that over the course of this

1 conflict, and even today, oppose the peace process. Some who
2 oppose the peace process through violence like Hamas, but are
3 not religious, they are Marxist or have other nationalist
4 ideology.

5 Q. Can you name some of those groups?

6 A. Popular Front for the Liberation of Palestine, Democratic
7 Front for the Liberation of Palestine. In many ways some of
8 the groups are affiliated with Fatah, the largest Palestinian
9 group that was headed by Yasser Arafat, including their
10 military wing the Al-Aqsa Martyrs Brigades.

11 Q. Was Yasser Arafat part of another organization or Fatah
12 part of another organization?

13 A. Yes.

14 Q. What was that organization?

15 A. Yasser Arafat was the chairman of the Palestine
16 Liberation Organization, or the PLO, and he was that by virtue
17 of being the head of Attach, which was the largest of the
18 Palestinian rejectionist groups.

19 Q. Was PLO sort of an umbrella group?

20 A. Exactly.

21 Q. And is Fatah -- is that secular or Islamist?

22 A. Secular.

23 Q. What does the name Hamas mean?

24 A. It is an acronym meaning Islamic Resistant Movement, it
25 is a play on words because the word itself means zeal.

1 Q. Does it go by any nicknames?

2 A. Yes. It would go by -- it goes by The Movement, because
3 it is the Islamic Resistance Movement, in the same way that
4 the Washington Institute where I work is often referred to as
5 The Institute.

6 Q. Could you briefly explain the structure of Hamas?

7 A. Hamas has three general wings--a social welfare wing, a
8 political wing, and a military wing that are all intertwined,
9 and all operate under the ultimate authority of the political
10 leadership at the top of the political wing.

11 Q. Have you assisted in creating a diagram that would help
12 the jury in your testimony understanding the structure of
13 Hamas?

14 A. I have.

15 Q. And there are some exhibits before you, if you can go --
16 they are turned over. Do you see before you what is marked as
17 Demonstrative No. 9?

18 A. Yes. It is -- Mine is demonstrative 12 is what I have
19 here.

20 Q. I am Sorry. Demonstrative 12. What is that?

21 A. This is the diagram of the Hamas structure.

22 MR. JONAS: Your Honor, I offer as a demonstrative
23 exhibit Demonstrative Exhibit No. 12.

24 MS. HOLLANDER: As a demonstrative only, Your Honor,
25 we don't object.

1 THE COURT: No objection? Demonstrative No. 12 is
2 admitted as a demonstrative exhibit.

3 MR. JONAS: If we can put that on the screen,
4 please.

5 Q. (BY MR. JONAS) Doctor Levitt, can you see what is on the
6 screen?

7 A. Yeah. It is a little -- The words are a little hard to
8 see, but I can see it.

9 Q. Can you explain what this triangle is?

10 A. Yes. This is a depiction of the Hamas structure showing
11 the political echelon at the top; the military wing of Hamas,
12 which is called the Izz el-Din al-Qassam Brigades, or the
13 Qassam Brigades, in the middle, and the symbol for the Qassam
14 Brigades is there; and then at the bottom of the pyramid at
15 the foundation is the social welfare wing of Hamas, which is
16 often described as the Dawa, which literally means to
17 proselytize. The way you get people in to proselytize to them
18 is by providing them services, and then you have an audience
19 to proselytize to.

20 Q. Can you define proselytize?

21 A. Preach. And the reason I depict it this way is because
22 the social welfare activities serves literally as the
23 foundation for all of the other activity--for the recruitment
24 for the group, for political activity, for military activity,
25 it provides grassroots support for the organization, it

1 provides financing and logistical support for the
2 organization, but the political echelon is at the very top
3 because they provide the strategic guidance. They are the
4 ultimate decision-makers and arbiters for the direction, and
5 sometimes even for specific actions for the group. In fact,
6 one of the reasons they are so important and in control is
7 because they often control the flow of funds through that
8 foundation of the social welfare, giving them or empowering
9 them with the ability to give that direction.

10 Q. Doctor Levitt, we will go into the structure in more
11 detail in a little bit. I want to get back to the history of
12 Hamas. You stated it was formed in 1987, but there has been
13 some indication that it was actually in existence prior to
14 that. Can you explain what you mean by that?

15 A. Hamas leaders have been very clear, in these interviews,
16 for example, that after the 1967 War, the process of creating
17 an Islamist-Palestinian --

18 MR. DRATEL: Can we get a time frame on these
19 interviews, please? He talked about Hamas interviews.

20 THE WITNESS: These are the two interviews I
21 mentioned earlier of Khalid Mishal. One is by Ghassan Charbel
22 that came out two or three years ago. The second one is by --
23 is in the Journal of Palestine Studies and is in the summer of
24 2008 most recent volume, and I believe the actual interviews
25 were carried out in March of this year.

1 Q. (BY MR. JONAS) Okay. If you could --

2 A. Both of Khalid Mishal, the head of the political
3 structure of Hamas.

4 Q. You were explaining Hamas' form prior to 1987.

5 A. Hamas in the Gaza Strip was very active in creating
6 social welfare institutions, then under the rubric of the
7 Palestinian wing of the Muslim Brotherhood --

8 Q. Let me stop you for a moment. What is the Muslim
9 Brotherhood?

10 A. The Muslim Brotherhood is an international organization
11 founded in Egypt. It is the largest Islamist organization in
12 the world. It has chapters throughout the world. And the
13 Palestinian chapter, the Palestinian wing of the Muslim
14 Brotherhood was where almost all the leaders of Hamas came up
15 through. Hamas describes itself as the Palestinian wing of
16 the Muslim Brotherhood.

17 Q. You said that the Muslim Brotherhood has branches
18 throughout the world. Is there a branch in the United States?

19 A. Certainly.

20 Q. When was the Muslim Brotherhood formed?

21 A. In the 1920s.

22 Q. Who formed it?

23 A. A person named Hassan al-Banna.

24 Q. What is the goal of the Muslim Brotherhood?

25 A. The goal of the Muslim Brotherhood is to bring Muslims

1 back to the proper practice of the faith; and once that is
2 done, to unite them in confronting and challenging the
3 perceived enemies of Islam. And for some Muslim Brotherhood
4 members that means creating kind of a transnational Islamic
5 state. It works as an international level. There is an
6 international Muslim Brotherhood, but it is active mostly in
7 each of these national chapters, if you will.

8 Q. How does the Muslim Brotherhood seek to establish this
9 goal?

10 A. It is extremely active in grassroots activity, political
11 and social welfare activity, and proselytizing, preaching, to
12 bring people back to, as they see it, the proper practice of
13 Islam--that Muslims should be properly practicing their faith;
14 and then that as they come back to that proper practice, that
15 will unite the Muslim nation, or the Ummah, and that then they
16 will be united and able to challenge, take on their perceived
17 enemies.

18 Q. Who are their perceived enemies?

19 A. Historically it would be those who are occupying or
20 living in areas that were at some point Muslim lands. And
21 traditionally today it is the Western culture, the Western
22 influence which they see as drawing people away from the
23 proper practice of Islam, and in particular because of its
24 dominance in the Western world, and in particular because of
25 its dominance in Western culture and also because of its

1 support for Israel, the United States.

2 Q. Is the Muslim Brotherhood, the international Muslim
3 Brotherhood, is that a violent organization?

4 A. No.

5 MR. DRATEL: Your Honor, I object. He is not an
6 expert on Muslim Brotherhood.

7 THE COURT: Overruled. Go ahead. You may answer.

8 THE WITNESS: No.

9 Q. (BY MR. JONAS) Is the Muslim Brotherhood outlawed in the
10 United States?

11 A. No.

12 Q. Is it outlawed in any country?

13 A. It is outlawed in Egypt. I don't know if it is outlawed
14 in other countries. In some countries it doesn't operate
15 expressly as the Muslim Brotherhood, but under different
16 names. So, for example, In Jordan it operates as the Islamic
17 Action Front, which enables the government to say that it is
18 dealing not with the Muslim Brotherhood but with another
19 entity that, in this case in Jordan, the Islamic Action Front
20 is very much involved and engaged in politics and holds seats
21 in parliament.

22 Q. You say that the Muslim Brotherhood's goal is to first
23 bring people back to Islam and then take on its perceived
24 enemies. Do all the chapters of the Muslim Brotherhood agree
25 in progressing that way?

1 A. Most do. Hamas is the exception. Hamas still refers to
2 itself as the Palestinian wing of the Muslim Brotherhood, or
3 The Brotherhood, the Ikhwan, but has flipped the order, and
4 does not believe in waiting until everyone has been brought
5 back to the proper practice of Islam to then violently
6 confront its enemies.

7 Q. You said that the Muslim Brotherhood as an international
8 body is not violent, but Hamas as a chapter, is that violent?
9 Is that chapter violent?

10 A. Yes.

11 Q. Does the international Muslim Brotherhood try to reign in
12 Hamas for being violent? Do they try to stop them, stop their
13 violence?

14 A. Within the Muslim Brotherhood there are some leaders who
15 are more supportive of Hamas and some who are less. That is
16 perhaps most noticed within the Islamic Action Front because
17 they operate in Jordan, which is just over the border from the
18 West Bank, and there is a lot of Palestinians living in
19 Jordan, a lot of Palestinians involved in the Islamic Action
20 Front. But the international Muslim Brotherhood doesn't
21 really have, you know, decision-making power or sway over
22 Hamas, and so it is in no position to reign in Hamas.

23 There have been senior Muslim Brotherhood officials who
24 have been quite praiseworthy of Hamas, including of Hamas
25 terrorist attacks.

1 Q. Does the Muslim Brotherhood operate covertly or overtly?

2 A. By and large it operates overtly, because in most places
3 it is not an illegal organization, and because in most of
4 those places it is not engaged in violence.

5 Q. You testified earlier that Hamas is an Islamist
6 institution versus a secular institution, or non-religious
7 institution. Muslim Brotherhood, Islamist or secular?

8 A. Islamist.

9 Q. Now, how long has the Palestinian branch of the Muslim
10 Brotherhood been in existence prior to becoming Hamas in 1987?

11 A. Many, many years. Since the formation of the Muslim
12 Brotherhood in the 1920s, there was always a strong influence
13 in the Gaza Strip. As early as the War of 1948, there were
14 Palestinians who fought in that war under the rubric of the
15 Muslim Brotherhood. And Hamas leaders often describe the
16 activities of the Palestinian wing of the Muslim Brotherhood
17 in that war.

18 They became much more active, however, as did grassroots
19 activity at large, after the 1967 War. Prior to 1967, in Gaza
20 in particular, they were cracked down on. They couldn't
21 operate very openly because the Muslim Brotherhood was banned.

22 Q. Cracked down on by whom?

23 A. By Egypt. And in fact one of the key founders of Hamas,
24 Sheikh Yassin, was arrested by the Egyptians before Gaza was
25 controlled by Israel.

1 After 1967 two things happened. Two things happened
2 because now Israel controlled this territory. The first was
3 they were no longer under Egyptian control and that freed
4 their hand. The second was that the Israelis, wanting to
5 counter the influence of the secular Palestinian terrorist
6 groups that were at that time the most active in the years
7 following the 1967 War, were very willing to reach out to the
8 religious elements within Palestinian society and help their
9 growth as an antidote to the Palestinian secular groups that
10 were at that time very much engaged in violence. At that
11 point the Islamists were not.

12 Q. Up until -- Leading up to 1987, talking about the time
13 period beforehand, what was the Palestinian branch of the
14 Muslim Brotherhood doing?

15 A. The most significant thing they were doing was building
16 social welfare institutions--charities, zakat committees which
17 are charity committees through which practicing Muslims can
18 donate that portion of their livelihood that they are
19 religiously required to donate, establishing mosques,
20 establishing the movement at a grassroots level, building
21 supports at a grassroots level.

22 Even as it also had leaders and activists outside Gaza,
23 not only in the West Bank which was where Hamas was slowly
24 beginning to develop, but outside in particular in Kuwait
25 where a large Palestinian diaspora was living, studying in

1 particular, and many future Hamas leaders, including Khalid
2 Mishal who is now the head of Hamas, were very involved in the
3 foundations of Hamas from Kuwait where they were very involved
4 with the Muslim Brotherhood in Kuwait.

5 Q. You used a couple of terms I am going to ask you what you
6 mean by. You said diaspora?

7 A. Diaspora means outside the home country. In this case,
8 for a Palestinian that would be outside the areas of Israel,
9 the West Bank, and Gaza.

10 Q. You also used the term grassroots. What do you mean by
11 that?

12 A. Grassroots means bottom up. Instead of, you know, a
13 federal government, national government activity, it means
14 individuals building charities, social service organizations,
15 non-governmental organizations, and acting at the very local
16 community level.

17 Q. What were some of these social organizations created by
18 the Palestinian branch of the Muslim Brotherhood prior to
19 1987?

20 A. The most important were the Islamic Society and the
21 Islamic Center, al-Mujama and the Jemaah. These were founded
22 by future founders of Hamas. Again, as they describe it, they
23 were already Hamas, they just hadn't named themselves and come
24 out as Hamas until December 1987. These were both umbrella
25 organizations that helped oversee the development of other

1 mosques, charities, social service organizations on the ground
2 in the Gaza trip.

3 Q. What was the purpose of the Muslim Brotherhood, the
4 Palestinian branch of the Muslim Brotherhood, having these
5 social services?

6 A. This is the key to the strategy. This is why it is at
7 the foundation of our triangle. This is how you reach people.
8 This is how you build a base of support within a population.
9 This is how you get people to come into your institution or
10 your mosque so that you can preach or proselytize to them.
11 Providing services is a very powerful way of building a base
12 of support.

13 Q. So in 1987 what happened to cause the Palestinian branch
14 of the Muslim Brotherhood to call themselves Hamas?

15 A. A lot. The local Palestinian population in the Gaza
16 Strip and the West Bank, as opposed to the outside leadership
17 in the form of the PLO, the Palestine Liberation Organization
18 headed by Yasser Arafat, which was always outside the
19 territories until the 1990s, first in Jordan, then in Lebanon,
20 and then in Tunisia in North Africa. But the domestic
21 leadership had had enough of the Israeli occupation; started
22 doing things like refusing to pay taxes to the military
23 occupation, and other forms of non-violent protests. But
24 there was a lot of tension on the ground, there were
25 occasional skirmishes. And there had already developed one

1 smaller Palestinian Islamist terrorist group that had begun to
2 carry out military attacks named Palestinian Islamic Jihad, or
3 PIG. That put a lot of pressure on the Palestinian Muslim
4 Brotherhood, on the PLO, because they were losing ground and
5 support to this more violent organization that seemed very
6 legitimate.

7 In December 1987 the Palestinian Islamic Jihad carried
8 out an attack against an Israeli. And a few days later an
9 Israeli truck driver lost control of his truck and the truck
10 rammed into a bunch of Palestinian civilians on the street,
11 killing many. Rumors spread very, very quickly that this was
12 an intentional Israeli retaliatory attack for the Palestinian
13 Islamic Jihad attack on the Israeli. Rumors spread that there
14 was a tank involved, frankly, ridiculous things. But it had
15 its effect, and riots ensued and they spread. And a massive
16 grassroots uprising, which is what an Intifada is, and that is
17 what is was called, the Intifada, began. It was a surprise to
18 Hamas. It was surprise to the Palestine Liberation
19 Organization based in Tunis. It was a surprise to the
20 Israelis and the military authorities at the time.

21 It was then -- Very quickly the issue became who was
22 going to kind of take control of this grassroots uprising and
23 who was going to get the credit for it and who was going to
24 guide it, who was going the benefit politically from this
25 opportunity. All the Palestinian entities tried to take

1 control, including the PLO from Tunis.

2 And one of the recent interviews I just stated, Khalid
3 Mishal, states clearly this was an opportunity then for Hamas
4 to found itself officially and ride this wave and insert
5 religion into the conflict so that the violence could have a
6 religious context, because, as he explains, when you insert
7 religion into a violent context, it empowers people. It helps
8 drive people. It builds their stamina.

9 And so Hamas was founded in December 1987 competing with
10 the PLO and other Palestinian groups and trying to take
11 control and ride this wave of the uprising to political
12 success.

13 Q. Prior to the Intifada, was the Palestinian branch of the
14 Muslim Brotherhood violent?

15 A. Yes. Not to the same extent, but even before December
16 1987 Hamas, then operating as the Palestinian wing of the
17 Muslim Brotherhood, engaged in small scale attacks. Sheikh
18 Yassin, the paraplegic spiritual leader and one of the
19 founders of Hamas in the Gaza Strip, the leader of the
20 Palestinian Muslim Brotherhood in the Gaza Strip, was arrested
21 in the early 1980s for his role in weapons procurement and
22 small scale attacks. Khalid Mishal, the head of Hamas, was
23 very open in these interviews about how important the military
24 activity was to Sheikh Yassin, the political leader.

25 But it wasn't until December 1987, when Hamas was founded

1 as such, that they began operating a military wing conducting
2 attacks against Israelis, soldiers and civilians alike, on a
3 regular basis. Until then the main security wing within
4 Hamas, within the Palestinian Muslim Brotherhood was an
5 internal security meant to prevent informants, meant to
6 protect the security of the organization.

7 Q. Right after the Intifada started, December '87 and 1988,
8 what sort of -- You said there is a grassroots uprising
9 against the Israelis. In what form did this uprising take?

10 A. Primarily stone-throwing. That was the major image; some
11 molotov cocktails and stuff like that, but primarily it was a
12 lot of civil disobedience which had already started, refusing
13 to pay taxes and et cetera. But what was new about the
14 Intifada, shops with were being closed in a coordinated
15 manner, businesses were being shut down, it made the military
16 occupation difficult, which was obviously the intention, and
17 stone-throwing primarily against the Israeli military, and
18 molotov cocktails.

19 Q. Did Hamas engage in the stone-throwing, or did they
20 commit some other types of acts against the Israeli military?

21 A. Hamas promoted the grassroots violence certainly, but
22 Hamas wanted to kick it up a notch, and so you had already in
23 the late 1980s, for example, kidnappings of Israeli soldiers
24 or police officers, usually kidnappings and subsequent murders
25 of those individuals. Sheikh Yassin, who I mentioned, had

1 been arrested around 1983 and had been released in a prisoner
2 exchange was rearrested because of his role in some of these
3 kidnappings in 1989, for example, of the soldiers Ilan Sa'adon
4 and Avi Sasportas.

5 Q. When Hamas was formed, were the members of the
6 Palestinian branch of the Muslim Brotherhood -- did they
7 automatically become Hamas members?

8 A. Yes. Hamas was the Palestinian branch of the Muslim
9 Brotherhood. That doesn't mean that every member of the
10 Palestinian Muslim Brotherhood or every member of Hamas was
11 involved in every type of Hamas activity.

12 Some people were still involved primarily in political
13 activity, some in social activity, and some in military
14 activity. But what Hamas did is it built this structure so
15 that all three wings were complementary. And it would not be,
16 as Hamas developed, at all uncommon for someone to serve time
17 in one and then another of the wings of Hamas.

18 Q. So as the members became Hamas, the members of the
19 Palestinian branch, the social institutions you described
20 earlier that were formed prior to 1987, did those stay with
21 Hamas post 1987?

22 A. It is not just that they stayed with Hamas. As the Hamas
23 leaders themselves describe it, they were already Hamas. It
24 changed in name only. These were Hamas institutions. They
25 remained Hamas institutions.

1 Q. So Hamas tries to capitalize on the Intifada. Would that
2 be a correct description?

3 A. Yes.

4 Q. And what is their goal in doing so? Why are they doing
5 so?

6 A. To broaden and expand the violent resistance to the
7 Israeli occupation and create grassroots support for that
8 violence in an effort to broaden Palestinian support for
9 efforts to defeat Israel.

10 Q. Why was it important, though, for Hamas not to cede the
11 leadership of the Palestinian people over to the PLO or some
12 of these other groups?

13 A. Ever since the conference in Rabat, Morocco in 1974 where
14 the Arab world gave the PLO the official title of
15 responsibility of being the sole legitimate representatives of
16 the Palestinian people, Hamas strove to challenge that. This
17 was a golden opportunity. The PLO was a leadership in exile,
18 and people, even Fatah and PLO members on the ground, were
19 getting tired of their lack of impact, and that is why they
20 started this grassroots rebellion.

21 Here you have Hamas, which is not based some place in
22 North Africa, but is on the ground and would be able, they
23 hoped, to oversee and guide and channel this anger and
24 frustration.

25 Q. Was there also a tension because PLO was secular and

1 Hamas was Islamist?

2 A. Certainly. That was only one of the reasons why they
3 were at loggerheads. Already at that point the PLO had begun
4 to make early signs of being willing to recognize Israel,
5 which it later did. And that, of course, was anathema to
6 Hamas, as it made clear in its constitution, its covenant, its
7 charter, that was released in the months after its founding.

8 Q. Since you mentioned the charter, let's talk about that.
9 Have you reviewed it?

10 A. I have.

11 Q. What language was it published in?

12 A. It was published in Arabic, and then appeared in English.

13 Q. Who published it in English?

14 A. It was published here in the United States by the Islamic
15 Association for Palestine, and it appeared in English in
16 multiple means, but the one that I and most academics use is a
17 translation produced by Yale University that is available on
18 the internet.

19 Q. If you can look at what is marked I believe as Hamas
20 Charter 2 in front of you.

21 A. Yes.

22 Q. What is that document?

23 A. This is a copy of the Hamas charter in Arabic.

24 MR. JONAS: Your Honor, I would offer into evidence
25 Hamas Charter 2.

1 MR. CLINE: No objection.

2 THE COURT: Admitted.

3 Q. (BY MR. JONAS) Doctor Levitt, do you see the screen in
4 front of you?

5 A. I do.

6 Q. What is on the screen?

7 A. It is the cover of the charter that I am holding.

8 Q. Of the exhibit before you?

9 A. Yes.

10 Q. And this is in Arabic. Is that correct?

11 A. It is.

12 Q. What is it a depiction of this drawing on the right side
13 of the booklet?

14 A. This is part of the region that we have been
15 describing--Israel, the Gaza Strip, and the West Bank.

16 Q. It is not delineated the Gaza Strip and West Bank, is it?

17 A. No, because for Hamas this is one singular area not to be
18 divided.

19 Q. Okay. Now, I believe you mentioned is there one
20 particular English version that is accepted by scholars, such
21 as yourself?

22 A. Yes. There are multiple versions, but the one that most
23 people use, because when you are translating from any language
24 there are many words that can be translated slightly
25 differently, the one most people use is one put out by Yale

1 University by the law school.

2 Q. If you can look in front of you, there should be
3 something marked Hamas Charter 1.

4 A. Yes.

5 Q. What is that document?

6 A. It is the covenant of the Islamic Resistance Movement,
7 the Avalon Project at Yale Law School translation.

8 Q. Is that the translation you referred to a moment ago that
9 is commonly referred to by scholars?

10 A. Yes.

11 MR. JONAS: Your Honor, at this time I offer into
12 evidence Hamas Charter 1.

13 MR. CLINE: No objection.

14 THE COURT: Admitted.

15 Q. (BY MR. JONAS) Doctor Levitt, did you assist in creating
16 a PowerPoint of the Hamas charter that would aid the jury in
17 your testimony?

18 A. I did.

19 Q. And do you have before you Demonstrative No. 9? I
20 believe this one is No. 9.

21 A. This one is.

22 Q. And what is that?

23 A. This is the PowerPoint that I helped prepare of the
24 official Hamas charter.

25 MR. JONAS: Your Honor, at this time I would offer

1 into evidence as a demonstrative Demonstrative No. 9.

2 MR. CLINE: Your Honor, no objection.

3 I wonder if we could have an instruction on the proper
4 use of a demonstrative.

5 THE COURT: Demonstrative No. 9 is admitted.

6 And members of the jury, a demonstrative exhibit means it
7 is not in evidence such that you won't be able to take it back
8 with you when you retire to deliberate, but can consider it in
9 the courtroom, and of course whatever you recall of it you can
10 rely on your memory.

11 MR. JONAS: Thank you, sir.

12 MR. JONAS: If we can put on the screen the first
13 page of the PowerPoint.

14 Q. (BY MR. JONAS) Doctor Levitt, we see on the left side,
15 is that the cover of the charter?

16 A. Yes.

17 Q. On the right side there is a date. What is that date?

18 A. That was the date that it was published.

19 Q. August 18th, 1988?

20 A. Yes.

21 MR. JONAS: If we could turn to the next slide?

22 Q. (BY MR. JONAS) And before I ask you a question about
23 this, Doctor Levitt, how is the charter broken up?

24 A. Into sections and into articles.

25 Q. Chapters?

1 A. Chapters, exactly.

2 Q. And with your PowerPoint slide and your testimony today,
3 are we going to go through every single chapter?

4 A. No. That would take a very long time.

5 Q. So we are just hitting some highlights?

6 A. Exactly.

7 Q. On the screen we see something that is marked as
8 "introduction." Would that be the beginning of the charter?

9 A. Exactly.

10 Q. It states, "Israel will exist and will continue to exist
11 until Islam will obliterate it, just as it obliterated others
12 before it." And that is a quote attributed to the martyr Emam
13 Hassan al-Banna. Who is that individual?

14 A. Hassan al-Banna was the founder of the Muslim Brotherhood
15 in the 1920s in Egypt, who we mentioned earlier.

16 Q. This quote says, "Israel will exist and continue to
17 exist," and it goes on and talks about Islam obliterating
18 others before it. Who are the others that they are referring
19 to?

20 A. When Islam was first founded, it was -- it conquered
21 territories, as many peoples and religions did at the time in
22 the middle ages, ancient times. Here you have a quote,
23 attributed to the founder of the Muslim Brotherhood, put into
24 the introduction setting the context for Hamas' charter, and
25 what they choose to open with, and I think is pretty clear, is

1 their position on Israel and what Muslims need to do about it.
2 If Muslims don't obliterate it, it will continue to exist, and
3 they need to obliterate it. Obliterate it is pretty clear.

4 MR. DRATEL: Objection, Your Honor; non-responsive
5 at this time.

6 THE COURT: Overruled. Go ahead.

7 BY MR. JONAS: If we can go to the next slide,
8 please.

9 Q. (BY MR. JONAS) This is a continuation of the
10 introduction. It says, "this covenant of the Islamic
11 Resistance Movement (Hamas) clarifies its picture, reveals its
12 identity, outlines its stand, explains its aims, speaks about
13 its hopes, and calls for its support, adoption, and joining
14 its ranks." What does that mean?

15 A. This document is going to lay out what Hamas is all
16 about--what it believes, what it wants to do, how it wants to
17 do it--and hopes to gather support among others for these
18 ideas, goals, strategies.

19 MR. JONAS: Next screen.

20 Q. (BY MR. JONAS) The top part of the screen on the right
21 refers to a quote from an Article 2. Would that be what you
22 referenced earlier about how this covenant or charter was
23 divided up?

24 A. Yes.

25 Q. It says, "The Islamic Resistance Movement is one of the

1 wings of the Muslim Brotherhood in Palestine." Care to
2 comment on that?

3 A. I think it is pretty self-explanatory.

4 Q. That supports what you said earlier about the history of
5 the organization?

6 A. Exactly. Hamas describes itself as the Palestinian wing
7 of the Muslim Brotherhood.

8 Q. The bottom half of the screen on the right side is a
9 quote from Article 3. It says, "In all that, they fear Allah
10 and raise the banner of jihad in the face of the oppressors so
11 that they would rid the land and the people of their
12 uncleanness, violence, and evils."

13 First of all, who is Allah?

14 A. Allah is God.

15 Q. Who is "they" that would fear Allah?

16 A. These are the Muslims who are properly practicing, doing
17 the right thing; those that fear God will raise the banner of
18 jihad in the face of those who oppress them to rid the land of
19 those who don't belong there, of people who are there but, the
20 way they are describing it, unclean, vile, and evil, meaning
21 people who are occupying land that they believe is theirs.

22 Q. Is there a particular people they are referring to here?

23 A. In this case it would be the Israelis.

24 Q. The term jihad, what does that mean?

25 A. Jihad has two meanings. Jihad can mean fighting against

1 one's enemies, against infidels, a violent confrontation.
2 Jihad can also mean personal self-improvement. And
3 distinguishing between the two requires what is usually a not
4 terribly sophisticated logic test, common sense test.

5 When you find the word jihad in the context of
6 obliterating, fighting, it is pretty clearly about a violent
7 jihad; and when you find jihad in the context of improving
8 one's self and becoming a better person, it is about
9 self-improvement. This is a violent jihad.

10 MR. JONAS: Next screen, please.

11 Q. (BY MR. JONAS) This is a long quote from Article 6.
12 "The Islamic Resistance Movement is a distinguished
13 Palestinian movement whose allegiance is to Allah and whose
14 way of life is Islam."

15 Why don't we just break it down. What does that mean?

16 A. The Islamic Resistance Movement is Palestinian, it is
17 national, but it is a national movement whose first allegiance
18 is to God. It is a religious movement. And it really sets it
19 apart by being both a nationalist and a religious movement.

20 Q. "It strives to raise the banner of Allah over every inch
21 of Palestine."

22 What does that mean?

23 A. Its purpose is to raise the banner of God over every inch
24 of Palestine, not parts of Palestine.

25 Q. When they say every inch of Palestine, what land mass are

1 they referring to?

2 A. The Palestine land mass that they have on the cover, on
3 the other side of the slide, which includes what they would
4 describe as all of historic Palestine, what is today Israel,
5 the West Bank, and Gaza.

6 MR. JONAS: Next page, please.

7 Q. (BY MR. JONAS) This is from Article 7. "The Prophet
8 Allah, bless him and grant him salvation, has said, 'The day
9 of judgment will not come about until Muslims fight the Jews,
10 killing the Jews, when the Jew will hide behind stones and
11 trees. The stones and trees will say, "O, Muslims, O,
12 Abdulla, there is a Jew behind me. Come and kill them. Only
13 the gharqad tree will not do that because it is one of the
14 trees of the Jews.'" "

15 What does this statement mean?

16 A. It is a phrase from Muslim tradition, and I am not in a
17 position to comment on its religious significance, but its
18 inclusion in the Hamas charter is very telling and at face
19 value speaks for itself. "The day of judgment will not come
20 until Muslims fight the Jews, killing the Jews, and stones and
21 trees -- the Jews will hide behind stones and trees, and the
22 stones and trees will say, 'Come and kill them. There is a
23 Jew behind me.'" This is Hamas' covenant. It is its charter,
24 What its about. That is what it said in its introduction.

25 What includes in here is something that is not just about

1 Israelis, it is about Jews, and so this now is something
2 larger. And this is clearly not a self-improvement jihad.
3 This is a kill the Jews jihad.

4 MR. JONAS: Next slide please.

5 Q. (BY MR. JONAS) This one is entitled "The Slogan of the
6 Islamic Resistance Movement." I want to be clear. Did you
7 put that yourself, "The Slogan of the Islamic Resistance
8 Movement," or is that from the charter?

9 A. This is all from the charter.

10 Q. It says, "Allah is its target, the profit is its model,
11 the Quran its constitution, jihad is its path, and death for
12 the sake of Allah is the loftiest of its wishes."

13 That says a mouthful. What does that mean?

14 A. This entire conflict, Hamas' entire agenda, is put into
15 the context of a religious struggle. God is its target, doing
16 God's work. The Prophet Mohammad is its model. The Quran,
17 which is the Muslims' Bible, if you will, is its constitution,
18 and the way it is going to do this is jihad is its path.

19 Killing the Jews is pretty clear what kind of jihad it
20 is. And here we have again death for the sake of Allah is the
21 loftiest of its wishes. This is not self-improvement.

22 Q. Something that we will talk about in a few moments but I
23 want to briefly touch upon here, what is Hamas known for in
24 terms of the military activity?

25 A. Hamas is known for a variety of types of attacks, but

1 perhaps it is most infamous for suicide attacks in which a
2 person actually does kill one's self in the process of
3 killing others.

4 Q. Does this quote here from Article 8 feed into giving
5 inspiration to people who become suicide bombers?

6 A. This is part of the radicalization propaganda that
7 carrying out this suicide bombing is not actually suicide by
8 the bomber, it is self-sacrifice on behalf of the nation; that
9 it is part of death for the sake of Allah, which is the
10 loftiest of wishes for a Hamas member.

11 MR. JONAS: Next slide, please.

12 Q. (BY MR. JONAS) The next one is entitled "Strategies and
13 Methods."

14 "The Islamic Resistance Movement believes that the land
15 of Palestine is an Islamic waqf consecrated for future Muslim
16 generations until judgment day. It, or any part of it, should
17 not be squandered. It, or any part of it, should not be given
18 up."

19 Starting with the first sentence, what is an Islamic
20 waqf?

21 A. An Islamic waqf is an Islamic endowment, something that
22 is ordained by God for the Muslims, meaning this is sacred
23 land; this is land that God has said has to be in control of
24 Muslims. It is not within the prerogative of any individual,
25 says Hamas, to give it up to somebody else for future

1 generations until judgment day. And then it says, "It, or any
2 part, of this land should not be squandered, shall not be
3 wasted, it, or any part, of this land should not be given up,
4 which obviously is mutually exclusive and in direct conflict
5 with the two-state solution which requires to compromise and
6 have part of the land for a Palestinian country and part of
7 the land for a country of Israel.

8 Q. The bottom quote says, "This is the law governing the
9 land of Palestine in the Islamic sharia, and the same goes for
10 any land the Muslims have conquered by force."

11 I want to stop there for a moment. You mentioned earlier
12 in your testimony about Hamas' goal in taking over this whole
13 land mass, Israel, is that they would operate under Islamic
14 law.

15 A. Correct.

16 Q. And does this quote go to that?

17 A. Very much so.

18 Q. It mentions Muslims have conquered by force. "The same
19 goes for any land the Muslims have conquered by force."

20 What does that mean?

21 A. This is a principle that is common among Islamist
22 ideology that any land that historically had been conquered by
23 Muslims becomes that waqf, that endowment, and must be
24 redeemed if it is taken over by somebody else and must have
25 Islamic law applied there.

1 Q. Does that mean they are looking beyond Israel in that
2 respect?

3 A. The way I read this is that they are saying the situation
4 with Israel is like the situation elsewhere. Hamas is not
5 saying it needs to go and conquer formerly Muslim lands like
6 Spain, but it is saying the same way this principle would
7 apply to any other formerly Muslim land it applies no less to
8 this case here of Israel.

9 MR. JONAS: Next slide, please.

10 Q. (BY MR. JONAS) This is from Article 13. It is entitled
11 "Peaceful Solutions, Initiatives and International
12 Conferences."

13 "Initiatives and so-called peaceful solutions and
14 international conferences are in contradiction to the
15 principles of the Islamic Resistance Movement. Abusing any
16 part of Palestine is abuse directed against the part of
17 religion. Nationalism of the Islamic Resistance Movement is
18 part of its religion."

19 The first sentence talking about initiatives and peaceful
20 solutions, what does that mean?

21 A. Again, I think it is pretty self-explanatory. Any
22 effort, any international initiative, any international
23 conference, any peaceful solution, is in contradiction to the
24 principles of the Islamic Resistance Movement, which is
25 dedicated to resolving this conflict by violently defeating

1 Israel and instituting an Islamic state in all of historic
2 Palestine.

3 And then again, Hamas puts this into a religious context.
4 "Abusing any part of Palestine is abuse directed against part
5 of the religion." These other Muslims who claim that they are
6 willing to share and divide this territory are, by Hamas'
7 definition, not being good Muslims.

8 And then they put Hamas' nationalism in the context of
9 religion as well. True, Hamas is both Islamist and
10 nationalist, but the nationalism of the Islamic Resistance
11 Movement is part of its religion, not the other way around.

12 MR. JONAS: Next slide, please.

13 Q. (BY MR. JONAS) This is a continuation of the same
14 article. "There is no solution for the Palestinian question
15 except through jihad."

16 Which jihad are they referring to?

17 A. Again, the context is quite clear. There is no solution
18 for the Palestinian question except through violent jihad. I
19 don't think they are implying that through personal
20 improvement they will obliterate Israel or the Jews.
21 Initiatives, proposals, and international conferences are all
22 a waste of time.

23 Q. Has Hamas ever engaged in a peace conference or peace
24 talks?

25 A. It is interesting. Hamas is not engaged in peace talks

1 for the purpose of a two-state solution. Hamas has engaged in
2 talks with other elements of Palestinian society, and in
3 recent times, even through third parties with Israel for a
4 temporary cease fire, but has never been willing to agree to a
5 permanent solution and has violated the cease fires.

6 Q. Has Israel recognized the cease fires that Hamas has
7 proposed?

8 A. Tacitly, in the sense that there have been situations
9 where Israel wanted a period of calm from Hamas attacks; for
10 example, after constant Hamas shelling of Israeli civilian
11 communities within Israel proper from within Hamas controlled
12 Gaza. But it doesn't sit down at the table with Hamas and
13 negotiate with them because Hamas has committed to Israel's
14 destruction.

15 Q. Have they ever backed away from this quote?

16 A. No.

17 Q. No?

18 A. No.

19 Q. You mentioned earlier that Hamas took over Gaza, and you
20 just mentioned about attacks from Gaza. So the fact that
21 Israel withdrew from Gaza, has that placated Hamas in any way?

22 A. Not at all. Attacks continue from Gaza in the form of --
23 primarily in the form of rockets and mortars fired at Israeli
24 towns. These rockets and mortars are very crude. You can't
25 aim them, so it is not like they are being fired at

1 specifically military targets. Some have fallen in homes.

2 MR. DRATEL: Your Honor, can we have a time frame?

3 THE COURT: He asked for a time frame.

4 THE WITNESS: Israel withdrew in 2005. Hamas rocket
5 attacks have continued with very little break since then.
6 Some of these have fallen in homes. Some of these have fallen
7 in kindergartens. There have also been small number of
8 attempts to infiltrate suicide bombers from the Gaza Strip,
9 but Israeli military measures have thwarted almost all of
10 these.

11 MR. JONAS: The next slide, please.

12 Q. (BY MR. JONAS) This is from Article 15. "The Jihad for
13 the Liberation of Palestine is an Individual Duty." That is
14 the title.

15 The quote, "The day that enemies usurp part of Muslim
16 land, jihad becomes the individual duty of every Muslim."

17 What does that mean?

18 A. Again, this has all being put into a religious context of
19 a religious obligation. This is not a religious obligation
20 that applies to the Muslims generally. This is an obligation
21 that applies to you as a Muslim. Every individual has an
22 obligation to participate in this violent jihad, the day that
23 the enemies take any type of Muslim land.

24 Q. Does that include Muslims who live outside of Israel,
25 West Bank, and Gaza?

1 A. Yes. And Hamas will frequently articulate that if you
2 are not going to come and do it yourself, support those who
3 will.

4 Q. Are you familiar with the term economic jihad?

5 A. I am.

6 Q. What does that mean?

7 A. Economic jihad, it is not my term, this is a term that
8 Hamas and similar groups have employed, jihad bin mal, jihad
9 with money literally, and the pitch goes very much like this:
10 If you cannot come and participate in the jihad yourself, then
11 fund someone who will. And by doing so, you will fulfill that
12 individual religious obligation you have to reconquer usurped
13 lands.

14 Q. Does that funding and economic jihad have to be direct
15 funding to somebody who is about to commit a suicide bomb or
16 some other attack?

17 A. No. Who do you make that check out to? This is made
18 through organizations that support Hamas, and it is not a
19 typical for a fundraising pitch that would be used by Hamas or
20 groups like Hamas, and in fact has been used.

21 Q. Does this quote, the first quote on the page that we have
22 read, play into the economic jihad, what you are talking
23 about?

24 A. Absolutely. You have this individual obligation. Here
25 is a way for you to fulfill it without having to go over there

1 and pull the trigger yourself.

2 Q. The rest of the next quote on the page is, "In face of
3 the Jews' usurpation of Palestine, it is compulsory that the
4 banner of jihad be raised. To do this requires a diffusion of
5 Islamic consciousness among the masses, both on the regional,
6 Arab, and Islamic levels."

7 I want to break this down for a moment. The first line,
8 "It is compulsory that the banner of jihad be raised." What
9 does that mean?

10 A. It is a requirement, it is compulsory that the banner,
11 the flag, the concept, the principle of violent jihad be
12 raised among the consciousness of the people; as if they do
13 not have this as a priority, they are not going to be willing
14 to engage in it. It takes self-sacrifice to go and put
15 yourself at risk engaged in violence. To do this requires the
16 diffusion or the spreading of the Islamic consciousness, of
17 this Islamic religious ideas among the masses, among the
18 people. You have to make people aware of their Islamic
19 obligations for those obligations to mean anything to them.
20 If you tell someone they have an obligation but they don't
21 subscribe to that world view, it doesn't mean anything. But
22 if you are able to bring people back to Islam, this form of
23 Islam, and then tell them they have an Islamic obligation,
24 that is a very powerful means of recruiting and mobilizing
25 people.

1 And this, they say in their charter, should be done at
2 the regional level in the Arab and Muslim worlds, at the Arab
3 and Islamic worlds--we should be soliciting the help of fellow
4 Arabs, of Muslims, it should be done throughout the region.

5 Q. So when you say regional Arab and Islamic, is regional
6 being Palestinians?

7 A. Regional is beyond Palestinians. In other words, they
8 are saying there is an individual responsibility on Muslims,
9 not on Palestinians, to help free Palestine and create a
10 Palestinian state in all of this territory defeating Israel;
11 not just the Palestinians. That may be nationalist in the
12 sense we may be Palestinian Islamists, but we are not in this
13 alone. This is something for the Muslim world to do. The
14 Muslim world has an obligation here.

15 Q. Has the Muslim world responded to what Hamas' charter is
16 calling for?

17 A. Of course you can't really ask does the Muslim world act
18 in a unitary fashion, but there are individuals and
19 organizations, and countries even, that have and that
20 subscribe to this similar ideology and say, yes, this is not
21 just a Palestinian issue; this is a Muslim issue, and we need
22 to support fellow Muslims in Palestine.

23 Q. Have these countries and individuals supported the fellow
24 Muslims through violent means the way Hamas calls for?

25 A. They have supported Hamas' violent means primarily

1 through money.

2 Q. What are some of these countries?

3 A. Iran for example, at different times some of the Gulf
4 countries. But the primary source is not any given country,
5 but individuals and organizations.

6 Q. The rest of the quote is, "It is necessary to instill the
7 spirit of jihad in the heart of the nation so that they would
8 confront the enemies and join the ranks of the fighters."

9 A. This whole premise is something that you need to convince
10 people of. The normal world view of a human being is to go to
11 work, make a living, provide for your family, get your kids
12 through school, and live a life; not to engage in acts that
13 could put you and your family at risk.

14 If you want to get people willing to do this, you need to
15 convince them to do it, and Hamas' primary means of doing that
16 is by saying that this is a religious obligation on each and
17 every one of you fellow Muslims.

18 Q. And how does Hamas do that to the Palestinian people?
19 How do they get that word out there?

20 A. They get the word out through their propaganda, but their
21 most effective means is through the Dawa, through the social
22 welfare infrastructure that was at the bottom, the foundation,
23 of that triangle. Dawa means proselytizing or preaching.
24 Those services get people in. You get those people in and
25 then you can convince them you have an opportunity to present

1 and convince them of this message.

2 MR. JONAS: Next slide, please.

3 Q. (BY MR. JONAS) This is also part of Article 15. It
4 says, "It is necessary that scientists, educators, and
5 teachers, information, and media people, as well as the
6 educated masses, especially the youth and sheikhs of the
7 Islamic movement, should take part in the operation of
8 awakening."

9 What does that mean?

10 A. If you are going to wake people up to this, if you are
11 going to bring them back to the proper practice of Islam so
12 that they will recognize their individual duty to jihad, it
13 can't just be us Hamas. It can't just be the few leaders
14 around Hamas. It needs to be across the spectrum of
15 society--respected persons, scientists, teachers, media. This
16 message needs to get out at a massive, mass grassroots level,
17 because that is how you are going to get people getting this
18 message from all different places, and it will permeate and it
19 will eventually awaken the masses to this necessity.

20 Q. The rest of this quote is, "It is important that the
21 basic changes be made in the school curriculum to cleanse it
22 of traces of ideological invasion that affected it as a result
23 of the orientalist and missionaries who infiltrated the
24 region following the defeat of the crusaders at the hands of
25 Saleh al-Din."

1 They are talking about school curriculum. What does that
2 mean?

3 A. There is nothing more important if you are trying to get
4 a message into society than to get it into the children, to
5 get it into the schools. Schools have always been a focus of
6 Hamas' attention. And it is, therefore, no surprise that
7 after Hamas came to power in the Gaza Strip one of the first
8 things it did was replaced secular educators with Hamas
9 teachers to get out moderate, pluralistic ideas that might,
10 for example, support a two-state solution compromise and get
11 in teachers who will preach Hamas' world view.

12 Q. Prior to Hamas taking over the Gaza Strip, did Hamas run
13 schools?

14 MR. DRATEL: Can we get a time frame again, Your
15 Honor?

16 Q. (BY MR. JONAS) You testified earlier that Hamas took
17 over the Gaza Strip in 2005?

18 A. The Israelis withdrew from Gaza in 2005. In January 2006
19 Hamas won elections and then -- and set up a government.
20 About a year later in February 2007 that government collapsed,
21 and a government that was made up of Hamas and others came to
22 power. And then just a few months later in June of 2007,
23 Hamas turned its guns again on fellow Palestinians, violently
24 taking over the Gaza Strip, and it was at that point that the
25 Hamas -- the gloves came off and they just completely replaced

1 educators with their own.

2 Q. Prior to that time period, and let's talk about the
3 1990s, did Hamas run schools?

4 A. Even before the 1990s. These social welfare
5 organizations include kindergartens and primary schools, and
6 throughout the West Bank and Gaza.

7 Q. And did they employ what they are saying in this Article
8 15 about the school curriculum supporting their position?

9 A. Yes.

10 Q. It says, "...cleansing the traces of ideological
11 invasion," and it talks about orientalists and the
12 missionaries. Who are the orientalists and missionaries that
13 infiltrated the region?

14 A. Westerners. There were missionaries, Christian
15 missionaries that came through the Arab world. There were
16 Westerners, Europeans, and Americans in particular, who came
17 through with Orientalist or Western ideas and values, and this
18 is Hamas saying that it is important to get rid of these
19 competing ideas in order to be able to instill their own.

20 MR. JONAS: Next slide, please.

21 Q. (BY MR. JONAS) This is from Article 18, and it is
22 entitled, "The Role of the Muslim Woman."

23 It says, "Women in the home of the fighting family,
24 whether she is a mother or a sister, plays the most important
25 role in looking after the family, rearing the children, and

1 imbuing them with moral values and thoughts derived from
2 Islam. She has to teach them to perform the religious duties
3 in preparation for the role of fighting awaiting them. That
4 is why it is necessary to pay great attention to schools and
5 the curriculum followed in educating Muslim girls so that they
6 would grow up to be good mothers, aware of their role in the
7 battle of liberation."

8 What role do the Muslim women play in Hamas?

9 A. If only a few words were absent from here, they would be
10 playing a role like we would want most mothers to
11 play--gearing their children, imbuing them with religious
12 values. But this is put out specifically in the context of
13 fighting--"the women in the home of the fighting family in
14 preparation for the role of fighting that awaits them, to be
15 good mothers aware of their role in the battle of liberation."
16 This is part of the purpose of a radicalizing Palestinian
17 society, not only at the kind of elite level of these
18 scientists and educators and media people at a massive level,
19 not only in the schools, but in the home. And they are
20 recognizing that parents, and in particular mothers, play a
21 very critical role here.

22 MR. JONAS: Next slide, please.

23 Q. (BY MR. JONAS) I am just going to read you this top one,
24 Article 21. "Social and Mutual Responsibility" is the title.

25 "Mutual and social responsibility means extending

1 assistance, financial or moral, to all those who are in need
2 and joining the execution of some of the work. Members of the
3 Islamic Resistance Movement should consider the interests of
4 the masses as their own personal interests."

5 What does that mean?

6 A. Here, too, this is presenting the goals of the
7 organization as something that is a personal responsibility.
8 This is going to take self-sacrifice, and, therefore, we have
9 to help each other. And again, it would have been fine if it
10 was helping each other, you know, under normal circumstances,
11 helping people get by, extending assistance, financial or
12 moral. But they are very particular. It is to those who are
13 in need and joining in the execution of some of the work.
14 This is not some other article. This is in the context of the
15 Hamas charter about obliterating Israel.

16 So if you find someone who might be inclined to
17 participate in this obliterating Israel and needs some help to
18 get by in doing so, then you should consider that your own
19 personal interest to help that individual so that they can
20 participate in Hamas' agenda.

21 MR. JONAS: Next slide, please.

22 Q. (BY MR. JONAS) This is from Article 27. "The
23 Palestinian Liberation Organization." Is that the PLO you
24 testified about earlier?

25 A. Yes.

1 Q. Why is it that Hamas is dedicating an article to the PLO?

2 A. PLO, especially when this charter came out, had many,
3 many followers, and Hamas had to explain why it is something
4 new that is worthy of followers at the expense of the PLO.
5 This would be perceived by many as not uniting but breaking up
6 the Palestinian national movement, and so they highlight their
7 differences and explain why.

8 Q. Is it partly because, as you said earlier, in the early
9 1970s the Arab world had deemed the PLO as the representative
10 of the Palestinian people?

11 A. In 1974. And Hamas is making its pitch as to why it
12 deserves an opportunity to play that role.

13 Q. It talks about the organization adopted the idea of the
14 secular state, and you testified earlier that the PLO is
15 secular, non-religious. Is that correct?

16 A. That is correct.

17 Q. So Hamas is recognizing that?

18 A. Yes.

19 Q. The last -- The bottom third of the page says, "The day
20 the Palestine Liberation Organization adopts Islam as its way
21 of life, we will become its soldiers and fuel for its fire
22 that will burn the enemies."

23 Has the PLO ever adopted Islam as its way of life?

24 A. No, it has not. And because it has not, Hamas has been
25 in conflict with it, and it with Hamas. As the first

1 paragraph states, "Secularism completely contradicts religious
2 ideology." Hamas is clearly a religious ideology.

3 Q. Has there been tension with the PLO from the time Hamas
4 was created up until today?

5 A. Yes.

6 Q. You mentioned earlier that when -- In 2007 when Hamas
7 took over Gaza, turned its guns on fellow Palestinians.

8 A. Yes.

9 Q. Was that the PLO, Fatah which was part of PLO that it
10 turned its guns on?

11 A. Yes.

12 MR. JONAS: Next slide, please.

13 Q. (BY MR. JONAS) This says from Section E. Would that be
14 a subsection of another article?

15 A. Correct.

16 Q. It is entitled, "Nationalist and Religious Groupings,
17 Institutions, Intellectual, the Arab and Islamic World."

18 It says, "The Islamic Resistance Movement hopes that all
19 these groupings will side with it in spheres, would support
20 it, adopt its stand, and solidify its activities and moves,
21 work toward rallying support for it so that the Islamic people
22 will be a base and a stay for it, supplying it with strategic
23 depth and all human material and informative spheres in time
24 and in place."

25 That is a mouthful. What does that mean?

1 A. Calling on these various cross-cuts of
2 society--nationalists, religious groups, institutions,
3 intellectuals, and the Arab and Islamic world, and it hopes
4 that they will support Hamas and its ideology and its
5 activity. They hope that these various types of entities will
6 adopt Hamas' stand and solidify and enable its activities. It
7 will be a base for it and provide it strategic depth in human
8 material, meaning supporters, operatives, and the information
9 sphere that they have talked about, this kind of battle of
10 ideas, getting the idea out at a massive level, and furthering
11 Hamas' agenda.

12 Q. The bottom half of the page says, "This should be done
13 through the convening of solidarity conferences, the issuing
14 of explanatory bulletins, favorable articles, and booklets
15 enlightening the masses regarding the Palestinian cause."

16 You testified Hamas has a website and issues communiques.
17 Does it also issue explanatory bulletins?

18 A. It does, but here even more to the point is it is saying
19 -- it is calling on all these other entities to do so as well,
20 because they don't want to be the only ones doing it. Your
21 message is much stronger when it is echoed by somebody else.
22 So they are hoping everybody else will convene solidarity
23 conferences, meaning in solidarity with the Hamas movement,
24 and issue these bulletins and favorable articles and booklets,
25 et cetera, as Hamas does, too, for certain.

1 MR. JONAS: Next slide, please.

2 Q. (BY MR. JONAS) This top part is from Article 30. It
3 says, "Jihad is not confined to the carrying of arms and the
4 confrontation of the enemy. Effective word, the good article,
5 the useful book, support, and solidarity, together with the
6 presence of sincere purpose for the hoisting of Allah's banner
7 higher and higher, all these are elements of the jihad for
8 Allah's sake."

9 Doctor Levitt, you testified about jihad having two
10 meanings. Which of those two meanings would this section
11 apply to?

12 A. This is in the context of the Hamas charter. The Hamas
13 charter has been clear throughout that it is about a violent
14 jihad. It has been very clear that this violent jihad is a
15 personal obligation of each Muslim, and that every person
16 should consider enabling someone else to participate in this
17 jihad in their personal interest. But there are many ways to
18 fulfill this obligation, Hamas is saying--not just by carrying
19 of arms and confronting the enemy directly, but if you support
20 that idea, those actions, like we just read in the last slide,
21 through articles, through conferences, the effective word, the
22 good article, the useful book, these too are good and
23 important tools that count as part of the jihad.

24 Q. The bottom half says, "Whosoever mobilizes a fighter for
25 the sake of Allah is himself a fighter. Whosoever supports

1 the relatives of a fighter, he himself is a fighter." Is that
2 in line with the principle we talked about earlier of economic
3 jihad?

4 A. That is economic jihad. That is the principle. Again,
5 multiple ways to fulfill this obligation. Can't do it
6 yourself? Enable someone else, fund someone else.

7 Q. And again, is the funding of someone giving someone money
8 to become a suicide bomber or an attacker?

9 A. It can be, but it is not handing them the envelope. This
10 is in the Hamas charter. Hamas is making the financial pitch
11 here for itself. And if you mobilize our fighters, Hamas is
12 saying in its charter, you will have fulfilled your obligation
13 as a fighter. You will be a fighter yourself.

14 Q. But does the mobilization have to be of the fighters to
15 satisfy what Hamas is calling for here, or can it be other
16 parts of Hamas as well?

17 A. Certainly it can be other parts of Hamas. As Hamas has
18 made clear, the jihad include these various types of
19 activities. And Hamas is very clear that its social,
20 political, and certainly military activities are part of this
21 violent jihad.

22 Q. So if someone gives money to the social wing, branch,
23 part of Hamas, the Dawa part, are they satisfying the call for
24 jihad that Hamas is requiring here?

25 A. Of course. And not just at this obvious level, but also

1 money is fungible. So you have an organization that is
2 involved in social welfare activity and political activity and
3 military activity, all. You provide them an extra \$10. That
4 is \$10 more they have at their availability and it frees up
5 \$10 they had for something else. So certainly it counts in
6 every which way.

7 MR. JONAS: If we can go to the next slide.

8 Q. (BY MR. JONAS) This is from Article 32. It says, "Egypt
9 was, to a great extent, removed from the circle of the
10 struggle through the treacherous Camp David agreement."

11 What does that mean?

12 A. Egypt had a peace deal, made a piece deal with Israel,
13 and referred to as the Camp David agreement because it was
14 finalized at the Camp David Presidential Retreat in Maryland
15 in 1979. And by virtue of making this deal, this compromise,
16 Egypt got back the Sinai, that big desert in the southern part
17 of Israel that Israel had conquered in the 1967 War, and Egypt
18 concluded a full peace deal. There is an Egyptian ambassador
19 in Israel and an Israeli ambassador in Egypt.

20 By doing this, Egypt, as far as Hamas and similar
21 organizations are concerned, they are treacherous. They are
22 traitors. They sold out.

23 Q. But does Hamas have any relationship with Egypt today?

24 A. Certainly. Hamas is very tactical, and its strategic and
25 tactical decisions are sometimes separate. Hamas will meet

1 with Egypt if Egypt can deliver something it needs, even
2 though strategically Hamas has very little respect for Egypt.

3 Q. The rest of that paragraph says, "They are trying to draw
4 other Arab countries into similar agreements and bring them
5 outside the circle of struggle."

6 Is the "they" they are talking about Egypt again?

7 A. Yes.

8 Q. And has other Arab countries made peace agreements with
9 Israel?

10 A. Jordan has.

11 Q. How does Hamas consider Jordan, then?

12 A. Not so happy about it.

13 Q. The bottom half of that page says, "The Islamic
14 Resistance Movement calls on Arab and Islamic nations to take
15 up the line of serious and persevering action to prevent the
16 success of this horrendous plan, to warn the people of the
17 danger emanating from leaving the circle of struggle against
18 Zionism."

19 What is Zionism?

20 A. Zionism is the ideology that led to the creation of a
21 Jewish homeland for the Jews and what became Israel. And for
22 Israelis and Jews, for most people in the world, it is -- For
23 Israelis and Jews it is a very good thing. For most people in
24 the world it is not a good or a bad thing.

25 Palestinians see Zionism see Zionism as the ideology that

1 stripped them of their land as see it as a very bad thing.
2 And the context of radical Palestinian groups, and in many
3 cases in non-radical Palestinian groups, Zionism is a very bad
4 word.

5 But the point here is that Hamas is calling on Arab and
6 Islamic nations, who have not yet made this peace deal with
7 Egypt, as Egypt had by the time this covenant came out --

8 Q. You mean peace deal with Israel?

9 A. Yes, the Israeli peace deal with Egypt. That they don't
10 want anybody else to follow suit. They are warning people off
11 of the danger that emanates from this horrendous plan of
12 striking peace deals. Because imagine if all the Arab states
13 struck a peace deal with Israel, struck these compromises with
14 Israel. Where would Hamas be left? Hamas does not believe in
15 compromise it would be left without this strategic depth. It
16 would be left without this support from the Arab and Muslim
17 worlds.

18 Q. The rest of that quote says, "Today it is Palestine.
19 Tomorrow it will be one country or another. The Zionist plan
20 is limitless."

21 Has Israel attempted to take over other countries?

22 A. No.

23 MR. JONAS: Your Honor, I was going to move to
24 another section.

25 THE COURT: Is this a good breaking point?

1 Let's go ahead and recess for the day. Be back here at
2 9:00 in the morning.

3 Please let me remind you about the instructions we
4 discussed earlier. Don't talk to anybody about the case.
5 Don't let anybody talk to you about it or watch any reports
6 about it. See you back at 9:00 in the morning.

7 (Whereupon, the jury left the courtroom.)

8 THE COURT: All right. Anything we need to address,
9 counsel, before we recess for the evening?

10 MR. MYSLIWIEC: Yes, Your Honor. We filed a motion,
11 docket No. 1183, I think first thing this morning, and it
12 relates to a document that Mr. Levitt --

13 THE COURT: Everybody can have a seat, by the way.

14 MR. MYSLIWIEC: It relates to a document that Mr.
15 Levitt has in his possession. He testified about it at his
16 *Daubert* hearing and also cited to that document in his book,
17 which effectively was his expert report in this case.

18 Based on Rule 705, and some other rules we have cited in
19 the motion, we believe we are entitled to that document being
20 produced.

21 We requested the document from Mr. Jonas, and in fact Mr.
22 Levitt testified that he was able to provide it at the *Daubert*
23 hearing. Upon requesting it before this trial, Mr. Jonas went
24 back, spoke to Mr. Levitt, and he is refusing to produce it to
25 the Defense on the grounds that it is confidential.

1 THE COURT: Mr. Jonas?

2 MR. JONAS: Your Honor, I haven't had a chance to
3 respond in writing because this was filed just before court
4 started this morning. I am happy to respond orally.

5 THE COURT: Yes, go ahead.

6 MR. JONAS: Doctor Levitt has not testified about
7 this document. This document is an index of material that the
8 Israelis have in their possession which relates to the
9 testimony of some of the Israeli witnesses that will come
10 later on in the trial. These were items that were seized by
11 the government of Israel during some military maneuvers in the
12 West Bank.

13 Doctor Levitt was provided this document as a researcher,
14 not because he was testifying in this case. He received it
15 years before we contracted with him.

16 The Defense has asked previously in the prior trial for
17 Doctor Levitt's material that he relies upon in his book.
18 Judge Fish dealt with this issue denying their request. It is
19 ECF 549. It is an order dated February 23rd, 2007.

20 I direct your attention the Court's attention to pages 5
21 through 7 generally where Judge Fish discusses the Defense's
22 request for material that Doctor Levitt refers to in his book.

23 Doctor Levitt did not refer to this document in his
24 testimony so far, and will not refer to it in his testimony
25 tomorrow. It only came up in the *Daubert* hearing upon cross

1 examination by Ms. Cadeddu. He didn't refer to it on direct
2 in his *Daubert* hearing. He did not create the document. He
3 is not relying on the document. There is no basis for the
4 Defense to get it.

5 It was provided to him by the Israelis in confidence, the
6 way many experts and scholars receive material. It is part of
7 a larger body of work he has reviewed and accumulated over a
8 course of time. There is no reason why they should be
9 entitled to this document.

10 THE COURT: Okay.

11 MR. MYSLIWIEC: Your Honor, I guess that is exactly
12 the point is that he reviewed this document in forming his
13 expert opinion, and clearly Rule 705 says that the Defense is
14 entitled to see the same material that the expert has seen so
15 that it can effectively prepare for cross examination. He
16 testified about this at the *Daubert* hearing, he cited to it in
17 his report. As far as I am aware of --

18 THE COURT: He cited to it in his report or the
19 book?

20 MR. MYSLIWIEC: That is what I meant. Because, as
21 you will see in the written motion, in their notice about Mr.
22 Levitt being an expert, they indicated that the book is his
23 report.

24 MR. JONAS: Your Honor, if I can address that. I
25 don't mean to cut you off. The Government has never, ever

1 indicated that. The Defense on several occasions has taken
2 something the Government said in order to be courteous -- And
3 we had told them Doctor Levitt will not be filing a report.
4 This was several years ago before the last trial. We said,
5 "However, if you look through his book you can see where some
6 of his testimony will be coming from," as an aid to them to
7 prepare for cross examination.

8 Believe me, I don't know if we will be that courteous
9 again, given how they have taken the Government's words and
10 have every time attempted to twist it against us by saying it
11 is in effect his report. It is not his report.

12 MR. MYSLIWIEC: Your Honor, maybe we can put that
13 issue aside. The point is he has talked about this book
14 repeatedly. The book deals with Hamas. It is clearly about
15 his expert opinion on Hamas and he bases that expert opinion
16 specifically on this document, which he cites to in the book,
17 which -- I mean, just to make another point about it, if it is
18 such a confidential document, why is he citing to it and
19 describing it in a publicly available book? I mean,
20 confidentiality is not a basis for not providing something
21 under Rule 705.

22 In addition to Rule 705, we have outlined a confrontation
23 clause basis for it, a Rule 16 basis for it, and as Mr. Levitt
24 testified here today, he is actually still a government
25 employee when he was talking about working with I think it was

1 General Jones. He said he hadn't given up his employment in
2 there. He is still on call.

3 That means this document, in addition to being in Mr.
4 Levitt's possession, is clearly within the control of the
5 Government.

6 So for those reasons it should be produced to the
7 Defense.

8 THE COURT: What is your reason for not wanting to
9 turn it over?

10 MR. JONAS: Because they are not entitled to it and
11 I am afraid -- For two reasons, Your Honor. One is they are
12 not entitled to it, there is no basis for it; and two, I am
13 afraid this is going to open a slippery slope where they are
14 going to start asking for everything in his possession, which,
15 by the way, is a two-way street. If we are going to go down
16 that road, everything that their experts have ever accumulated
17 we would be entitled to. And I am not saying we are.

18 I just request that Your Honor review Judge Fish's order
19 on this issue.

20 THE COURT: I will.

21 MR. JONAS: And Doctor Levitt is not a Government
22 employee. Because he has been a consultant for General Jones
23 on the Israeli-Palestinian conflict does not make him a
24 government employee, and it does not make that document in the
25 possession of the government.

1 And one other point, Your Honor, because we are going to
2 go in circles real soon on this. This is a document that is
3 an index listing other items that were seized from the Israeli
4 military. It is those items that Doctor Levitt has reviewed.
5 All the index is is a listing of those items. And I think
6 this is a back door attempt to get another -- This is a back
7 door attempt to find out what the Israelis took that the
8 Defendants had other means of learning about that they chose
9 not to pursue.

10 This document cannot be used to cross Doctor Levitt. He
11 didn't create it. And frankly, Your Honor, it is also in
12 Hebrew. It is not going to help them.

13 I think I have said everything I need to say, and I
14 think, Your Honor, I would just direct you to Judge Fish's
15 order.

16 MR. MYSLIWIEC: Just on that last point, Your Honor,
17 cross examination -- The right to cross examination involves
18 questioning the witness about what he chose to consider and
19 also about what he chose not to consider, and this index
20 indicates documents, or should indicate documents, which he
21 chose not to consider, and we have the right to cross examine
22 about that and the right to know about it under Rule 705 and
23 the other authorities I cited to.

24 THE COURT: All right. Let me take a look at -- And
25 I read your motion that you filed this morning, but I read it

1 hurriedly, so let me take a look at that.

2 And I take it you filed a response the last time and then
3 Judge Fish did his order.

4 MR. JONAS: Yes, sir.

5 MS. HOLLANDER: Your Honor, I would just like to add
6 these are documents within the government of Israel that we
7 have no other way to get. We did file a motion earlier for
8 request for letters rogatory, which I don't believe the Court
9 has ruled on. But we don't have any other way to get these
10 documents or to get this list.

11 And Doctor Levitt, although he didn't write an expert
12 report, I think that if you look at what the Government
13 provided at that time, they said, "He is not doing a report,
14 but you can rely on his book." And that is what we have been
15 doing.

16 THE COURT: Okay. Let me take a look at that.
17 Remind me in the morning.

18 We are in recess until 9:00.

19 (End of Day.)
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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

10/16/2008

10 _____DATE_____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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